रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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No. 25] NEW DELHI, JULY 12—JULY 18, 2020, SATURDAY/ ASADHA 21— ASADHA 27, 1942

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

(सीटीसीआर और आईएस-II प्रभाग)

आदेश

नई दिल्ली, 13 जुलाई, 2020

का.आ. 523.—मानवाधिकार संरक्षण अधिनियम, 1993 (1994 का 10) की धारा 21 की उप-धारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अंडमान और निकोबार द्वीप समूह, संघ राज्य क्षेत्र द्वारा निष्पादित किए जा रहे मानवाधिकारों से संबंधित कार्यों को राज्य मानवाधिकार आयोग, तमिलनाडु को सौंपने के लिए राष्ट्रपति की संस्वीकृति प्रदान की जाती है।

[फा. सं.15011/125/2019-एचआर-III]

आशुतोष अग्निहोत्री, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

(CTCR & IS-II DIVISION)

ORDER

New Delhi, the 13th July, 2020

S.O. 523.—In exercise of the powers conferred by sub-section (7) of section 21 of the Protection of Human Rights Act, 1993 (10 of 1994), the sanction of the President is hereby accorded to confer upon the State Human Rights Commission, Tamil Nadu, the functions relating to human rights being discharged by the Union territory of Andaman and Nicobar Islands.

[F. No. 15011/125/2019-HR-III]

ASHUTOSH AGNIHOTRI, Jt. Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 10 जुलाई, 2020

का.आ. 524.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केरल राज्य सरकार की अधिसूचना सं 15421/एसएसए 5/2017/गृह दिनांक 08/06/2017 के माध्यम से प्राप्त सहमति से विदेशी अंशदान (विनियमन) अधिनियम, 2010 (2010 का केन्द्रीय अधिनियम 42) के अंतर्गत दंडनीय अपराधों की जांच करने के लिए तथा उक्त मामले से सम्बद्ध अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न प्रासंगिक अन्य अपराध या अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापनाके सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त केरल राज्य में विस्तार करती है।

[फा. सं. 228/55/2017-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 10th July, 2020

S.O. 524.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Kerala vide Notification No. 15421/SSA5/2017/Home dated 08.06.2017 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Kerala for investigation of offences punishable under the Foreign Contribution (Regulation) Act, 2010 (Central Act 42 of 2010); and attempt, abetment and conspiracy in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[F. No. 228/55/2017-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 10 जुलाई, 2020

का.आ. 525.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 की अधिनियम संख्या 25) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अपराधों, जिनका अन्वेषण भी दिल्ली विशेष पुलिस स्थापना के सदस्यों द्वारा किया जाना है, को विनिर्दिष्ट करती है:-

(क) भारत का राज्य संप्रतीक (अनुचित प्रयोग प्रतिषेध) अधिनियम, 2005 (2005 का अधिनियम सं. 50) के अंतर्गत दंडनीय अपराधों;

(ख) ऊपर्युक्त अपराध(धों)से जुड़े या उससे संबद्ध किसी दुष्प्रयास, दुष्प्रेरणा और षड्यंत्र एवं/अथवा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न कोई अन्य अपराध।

[फा. सं. 228/17/2020-एवीडी-II]

संजय कुमार चौरसिया, अवर सचिव

New Delhi, the 10th July, 2020

S.O. 525.—In exercise of the powers conferred by Section 3 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government hereby specifies the following offences which are also to be investigated by the members of the Delhi Special Police Establishment, namely :-

(a) Offences punishable under the State Emblem of India (Prohibition of Improper Use) Act, 2005 (Act No. 50 of 2005) ;

(b) any attempt, abetment and conspiracy in relation to or in connection with above mentioned offence(s) and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/17/2020-AVD-II]

SANJAY KUMAR CHAURASIA, Under Secy.

नई दिल्ली, 16 जुलाई, 2020

का.आ. 526.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री सार्थक नायक, अधिवक्ता को, उड़ीसा उच्च न्यायालय, कटक के समक्ष दिल्ली विशेष पुलिस स्थापन (सीबीआई) द्वारा अन्वेषण किए गए मामलो से उद्भूत अभियोजन, अपीलों, पुनरीक्षणों और अन्य विषयों के संचालन के लिए और उससे सम्बधित या उनके अनुषंगिक विषयों के लिए, नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या अग्रिम आदेश तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है ।

[फा. सं. 225/01/2020-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 16th July, 2020

S.O. 526.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri Sarthak Nayak, Advocate as Special Public Prosecutor for conducting the prosecution, appeals, revisions and other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI), before the Orissa High Court at Cuttack and for matters connected therewith or incidental thereto, for a period of three years from the date of appointment or until further orders, whichever is earlier.

[F. No. 225/01/2020-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 16 जुलाई, 2020

का.आ. 527.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री सचिन आचार्य अधिवक्ता को, जोधपुर स्थित राजस्थान उच्च न्यायालय के समक्ष दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा अन्वेषित अभियोजन, अपीलों, पुनरीक्षणों और उन मामलों से संबंधित अन्य विषयों के संचालन के लिए, नियुक्ति की तारीख से तीन वर्ष के लिए या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है ।

[फा. सं. 225/10/2016-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 16th July, 2020

S.O. 527.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri. Sachin Acharya, Advocate as Special Public Prosecutor for conducting the prosecution, appeals, revisions and other matters arising out of the cases investigated by the Delhi Special Police Establishment (Central Bureau of Investigation) before the Rajasthan High Court at Jodhpur for a period of three years from the date of appointment or until further orders.

[F. No. 225/10/2016-AVD-II]

S.P.R. TRIPATHI, Under Secy.

नई दिल्ली, 16 जुलाई, 2020

का.आ. 528.—केन्द्रीय सरकार, आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1985 की धारा 13 की उपधारा (1) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार की तारीख 5 दिसंबर, 1997 की अधिसूचना सं. 225/49/97-एवीडी-II (i) और भारत सरकार की तारीख 27 अप्रैल, 2001 की अधिसूचना सं. 225/29/2000-एवीडी-II (ii) को उन बातों के सिवाय अधिक्रांत करते हुए जिन्हें ऐसे अधिक्रमण से पूर्व किया गया है या करने का लोप किया गया है, सुश्री मोनिका कोहली, अधिवक्ता (वर्तमान में, जम्मू स्थित जम्मू-कश्मीर उच्च न्यायालय में, विशेष लोक अभियोजक, केन्द्रीय अन्वेषण ब्यूरो) और श्री शैला कुमार भट, अपर विधिक सलाहकार (सेवानिवृत), केन्द्रीय अन्वेषण ब्यूरो, नई दिल्ली को, आतंकवादी और विध्वंसकारी क्रियाकलाप (निवारण) अधिनियम, 1987 की धारा 9 के उपबंधों के अधीन गठित जम्मू स्थित अभिहित न्यायालय में दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा अन्वेषित या संस्थित मामले अर्थात् (i) आरसी-1 (एस)/1990-एसआईयू.V/सीबीआई/एसआईसी.II/नई दिल्ली (वायु सेना पदधारियों का हत्या संबंधी मामला) और (ii) आरसी-7 (एस)/1990-एसआईयू.V/सीबीआई/एसआईसी.II/नई दिल्ली (रूबिया सईद अपहरण संबंधी मामला) में और उनमें संबंधित या उनके अनुषंगिक और उक्त अधिनियम के अधीन उद्भूत किसी अन्य मामले में अभियोजन का संचालन करने के लिए, कार्मिक ओर प्रशिक्षण विभाग के पत्र संख्या 225/30/2005-एवीडी-II, तारीख 20-9-2006 में नियत साधारण निबन्धन और शर्तों पर, नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले का निपटारा होने तक, इनमें से जो भी पूर्वतर हो, नियुक्त करती है।

[फा. सं. 225/23/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 16th July, 2020

S.O. 528.—In exercise of the powers conferred by the proviso to sub section (1) of section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act No.28 of 1987) and in supersession of Notification No. 225/49/97-AVD-II(i), Government of India dated 05.12.1997, and Notification No. 225/29/2000-AVD-II (ii), Government of India dated 27.04.2001, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints Ms. Monika Kohli, Advocate (presently Special Public prosecutor, CBI in Jammu & Kashmir High Court at Jammu) and Shri Shaila Kumar Bhat, Additional Legal Advisor (Retired), Central Bureau of Investigation, New Delhi as Special Public Prosecutors for conducting prosecution in the cases namely (i) RC-1(S)/1990-SIU.V/CBI/SIC.II/New Delhi (Air Force Officials murder case) and (ii) RC-7(S)/1990-SIU.V/CBI/SIC.II/New Delhi (Rubiya Sayeed Kidnapping case) and any other matter connected therewith or incidental thereto and arising under the said Act, investigated or instituted by Delhi Special Police Establishment (CBI), in the designated Court at Jammu, constituted under the provision of section 9 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 for a period of three years from the date of appointment or till the disposal of the cases, whichever is earlier on general terms and conditions stipulated in Department of Personnel & Training letter No.225/30/2005-AVD.II dated 20.09.2006.

[F. No. 225/23/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 16 जुलाई, 2020

का.आ. 529.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन ज़ारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का. आ. 2225, तारीख 01 जनवरी, 2020 द्वारा जो भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 04 जनवरी, 2020 में प्रकाशित की गई थी, उक्त अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र में 685.000 हेक्टर (लगभग) या 1692.635 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकारों के अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और ओडिशा सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है, कि इसे संलग्न अनुसूची में यथा-वर्णित 684.620 हेक्टर (लगभग) या 1691.730 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाने चाहिए;

अत:, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि, अनुसूची में यथा-वर्णित 684.620 हेक्टर (लगभग) या 1691.730 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक संख्या ओसीपीएल/सीओ/16-सीबीए, तारीख 07 मार्च, 2020 का निरीक्षण कलक्टर, जिला सुन्दरगढ़, ओडिशा के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता - 700 001 के कार्यालय में या मुख्य कार्यपालक अधिकारी, ओडिशा कोल एण्ड पावर लिमिटेड, जोन-ए, ग्राउंड फ्लोर, फोरच्यून टार्वर्स, भूवनेश्वर-751023, ओडिशा के कार्यालय में किया जा सकता है।

अनुसूची

डीप साइड मनोहरपुर कोयला ब्लॉक

आई.बी. वैली कोलफील्ड्स

जिला सुन्दरगढ़, राज्य -ओडिशा

[रेखांक धारक संख्यांक ओसीपीएल/ सीओ/16-सीबीए, तारीख 07 मार्च, 2020]

सभी अधिकार:

(क) राजस्व भूमि:

क्र.सं.	ग्राम का नाम	ग्राम संख्या/ थाना संख्या	पटवारी/ राजस्व सर्किल का नाम	तहसील	जिला	क्षेत्र हेक्टेयर में (लगभग)	टिप्पणियां
1.	दुरूबागा	70	हेमगिर	हेमगिर	सुन्दरगढ़	12.480	भाग
2.	कटाराबागा	69	हेमगिर	हेमगिर	सुन्दरगढ़	62.390	भाग
3.	काथाफली	108	घुमुदासन	हेमगिर	सुन्दरगढ़	208.030	भाग
4.	परमानंदपुर	107	घुमुदासन	हेमगिर	सुन्दरगढ़	122.990	भाग
कुल: 405.890 हेक्टेयर (लगभग) या 1002.970 एकड़ (लगभग)							

(ख) वन भूमि:

क्र.सं.	ग्राम का नाम	ग्राम संख्या/ थाना संख्या	पटवारी/ राजस्व सर्किल का नाम	तहसील	जिला	क्षेत्र हेक्टेयर में (लगभग)	टिप्पणियां
1.	दुरूबागा	70	हेमगिर	हेमगिर	सुन्दरगढ़	29.040	भाग
2.	कातरबागा	69	हेमगिर	हेमगिर	सुन्दरगढ़	24.130	भाग
3.	काथाफली	108	घुमुदासन	हेमगिर	सुन्दरगढ़	18.630	भाग
4.	परमानंदपुर	107	घुमुदासन	हेमगिर	सुन्दरगढ़	30.340	भाग
5.	काहनुपहाड़ आरक्षित वन	--	--	हेमगिर	सुन्दरगढ़	10.520	भाग
6.	हुन्डरखोल आरक्षित वन	--	--	हेमगिर	सुन्दरगढ़	166.070	भाग
कुल: 278.730 हेक्टेयर (लगभग) या 688.760 एकड़ (लगभग)							

सारांश:

(क) कुल राजस्व भूमि: 405.890 हेक्टेयर (लगभग) या 1002.970 एकड़ (लगभग)

(ख) कुल वन भूमि: 278.730 हेक्टेयर (लगभग) या 688.760 एकड़ (लगभग)

(ग) कुल योग (क + ख): 684.620 हेक्टेयर (लगभग) या 1691.730 एकड़ (लगभग)

अर्जित किए जाने वाले राजस्व प्लाट संख्यांकों की सूची:

1. ग्राम – दुरूबागा :

1137 (भाग), 1139 (भाग), 1272, 1270 (भाग), 1294/1676, 1294/1680, 1294/1681, 1294/1682, 1294/1683, 1294/1684, 1294, 1138 (भाग), 1269 (भाग), 1140 (भाग),

1294/1685, 1282/2012, 1282/2015, 1282/2017, 1282/2018, 1282/2019, 1282/2020, 1282/2021, 1282/2036, 1282/2036/2082, 1282, 1277, 1278, 1279, 1290, 1280/2/1513 (भाग), 1280/1/1514 (भाग) , 1311 (भाग), 2036/2089, 2036/2090, 1313 (भाग) , 1134, 1266 (भाग), 1301, 1305, 1307, 1371 (भाग) , 1265, 1281, 1292, 1367 (भाग) , 1262 (भाग) , 1274, 1276, 1297, 1299, 1302, 1303, 1309, 1365, 1368 (भाग) ।

2. ग्राम – कातरबागा :

39 (भाग) , 40 (भाग) , 71 (भाग) , 76 (भाग) , 77 (भाग) , 103, 103/592, 104, 105, 105/455, 106, 107, 107/365, 107/431, 107/431/496, 107/432, 107/432/497, 108, 108/461, 109, 109/428, 428/452, 109/459, 111, 111/451, 111/429, 111/430, 112, 112/427, 116, 116/470, 116/471, 116/472, 116/473, 116/474, 116/475, 116/476, 118, 119, 120, 120/518, 120/530, 120/544, 120/552, 120/555, 555/570, 121, 121/443, 122, 123, 124, 124/519, 124/531, 124/545, 125, 126, 127, 128, 128/403, 128/421, 128/422, 128/422/488, 128/423, 128/426, 128/426/440, 129, 129/442, 129/434, 434/441, 130, 130/468, 130/468/580, 130/468/585, 131 (भाग) , 132 (भाग) , 134 (भाग) , 135, 135/575, 135/576, 135/581, 135/582, 135/582/623, 135/583, 136, 136/439, 136/485, 136/486, 137, 137/436, 138, 139, 139/584, 140, 140/469, 141, 141/580, 141/484, 142, 142/596, 596/604, 142/602, 143, 144, 145, 146, 146/465, 146/466, 146/467, 146/487, 147, 147/437, 147/462, 147/463, 147/464, 147/499, 147/500, 150/615, 150/617, 150, 151, 151/454, 151/454/628, 151/458, 152 (भाग) , 153 (भाग) , 154 (भाग) , 163 (भाग) , 164 (भाग), 166 (भाग) , 252 (भाग) , 252/341 (भाग) , 253 (भाग) , 254, 254/372, 254/372/610, 254/373, 373/618, 254/374, 255, 255/489, 255/490, 255/490/557, 255/444/491, 255/444, 256, 257 (भाग) , 258, 259, 260, 261, 262, 263, 265, 266, 266/594, 266/595, 267, 268/375, 269, 270, 271, 271/507, 271/390, 272, 273, 274, 274/438, 276 (भाग) , 278 (भाग) , 288 (भाग) , 289 (भाग) , 290 (भाग) , 291, 293 (भाग) , 294, 294/410, 299, 300, 301, 301/605, 301/606, 301/607, 301/608, 302, 303, 305, 310, 310/502, 311, 311/503, 311/571, 311/572, 311/573, 311/574, 312, 312/479, 312/480, 312/481, 312/482, 312/483, 312/479/578, 312/480/579, 313, 318, 319, 327/377 (भाग) , 242, 49 (भाग) , 97 (भाग) , 98 (भाग) , 98/331, 99, 100, 101, 102, 110, 113, 114, 115, 117, 124/329, 148, 149, 264, 268, 275 (भाग) , 284 (भाग) , 285 (भाग) , 296, 297, 304, 306, 308, 309, 314, 315, 316, 320, 272/376, 321, 322, 323, 324, 325, 326, 328.

3. ग्राम – काथाफली:

124, 28, 59, 62, 67, 91, 92, 93, 96, 97, 99, 102, 108, 110, 118, 125, 127, 135, 136, 148, 153, 167, 168, 172, 185, 191, 192, 202, 207, 217, 219, 220, 222, 236, 237, 207/340, 93/348, 106/350, 155/361, 193/365, 91/382, 91/383, 91/384, 91/385, 99/386, 99/387, 89, 90, 105, 107, 132, 130, 164, 213 (भाग), 138, 128, 32, 33, 77, 78, 79, 80, 81, 84, 86, 87, 243, 76/347, 111, 13, 47, 49, 179, 101, 208 (भाग) , 69, 72, 94, 29/333, 31/337, 183, 180, 181, 182, 186, 203, 184/339, 147/357, 202/367, 244, 214 (भाग), 226/512, 246/513, 247/514, 233/520, 273 (भाग), 143, 19, 20, 21, 22, 120, 140/352, 195, 196 (भाग), 197, 198, 194, 140, 144, 139, 140/353, 205, 206, 131, 395/539, 395/540, 395/541, 395/542,188/395, 177/1/389, 91/390, 91/391, 93/392, 99/393, 177/402, 177/398, 177/399, 177/400, 177/401, ,16, 50, 12/405, 8/407, 10/408, 11/409, 14/410, 9/418, 177/427, 177/419, 177/420, 177/421, 177/422, 177/423, 177/424, 215 (भाग), 216, 177/426, 177/428, 177/429, 177/430, 177/431, 65, 65/543, 543/546, 65/544, 544/547, 65/545545/548, 103, 106, 109, 114, 115, 126, 152, 184, 221, 223, 223/343, 39, 41, 150, 104, 113, 65/432, 101/433, 103/434, 106/435, 109/436, 114/437, 115/438, 126/439, 52/440, 21/441, 23/442, 42, 39/443,150/444, 37, 121, 190, 99/394, 37/445, 36, 98, 158, 193, 241, 91/395, 37/446, 190/447, 121/448, 99/449, 127/450, 88, 88/538, 145, 33/451, 34, 176/452, 177/455,177/456,177/457, 177/458, 177/459, 177/460, 177/461, 177/462, 177/463, 177/464, 177/465, 177/466, 177/467, 177/468, 177/469, 176/470, 157/473, 35/472, 85, 85/471, 240, 35/474, 32/335, 82, 149, 201, 236/371, 21/475, 475/482, 37/476, 81/477, 86/478, 243/479, 173, 176/480, 76, 76/495, 176/481, 147, 68, 69/483, 73/484, 74, 75, 72/485, 73, 241/486, 241/487, 98/488, 98/489, 98/490, 432/491, 432/492, 65/493, 176/494, 176, 96/496, 237/497, 80/498, 80/499, 96/500, 237/505, 78/506, 19/507, 237/508, 217/509, 19/511, 233/515, 224, 226/521, 226 (भाग), 232, 234/516, 226/522, 231/517, 234, 225, 231, 342/518, 235, 217/342, 64, 230/523, 233 (भाग), 246 (भाग), 247, 28/334, 194/524, 129, 129/525, 141, 244/526, 136/354, 244/528, 354/530, 244/531, 363/533, 244/534, 128/363, 188/395/536, 227, 369, 7, 31, 40, 43, 44, 45, 160, 166, 169, 170, 177, 218, 188/364, 66, 71, 95, 100, 112, 119, 122, 123, 133, 134, 137, 142, 146, 171, 69/346, 120/351, 142/355, 142/356, 8, 9, 10, 11, 12, 14, 15, 25, 26, 29, 32, 35, 38, 48, 52, 53, 54, 56, 61, 70, 83, 116, 117, 154, 157, 159, 161, 162, 163, 174, 200, 204, 276, 184/341, 59/344, 65/345, 97/349, 149/358, 86/359, 87/360, 160/362,

193/366, 202/368, 239/372, 243/373, 1, 4, 6, 23, 30, 46, 51 (भाग) , 58, 63, 151, 155, 165, 188 (भाग) , 199, 210, 238, 242 (भाग) , 245, 277 (भाग) , 284 (भाग) , 37/338, 5.

4. ग्राम – परमानंदपुर:

74, 90, 113, 115, 117, 149, 150, 167, 173, 175, 189, 192, 201, 205, 211, 214, 215, 216, 221, 224, 225, 226, 232, 248, 249, 250, 254, 255, 258, 259, 262, 263, 264, 265, 266, 273, 59, 61, 63, 66, 69, 70, 75, 76, 89, 91, 96, 141, 207, 18, 19, 29, 31, 157, 157/408, 408/412, 157/409, 17, 20, 21, 24, 25, 26, 30, 12, 16, 22, 23, 27, 32, 80, 118, 137, 138, 140, 170, 171, 133/281, 136/283, 178/297, 109, 116, 121, 122, 123, 124, 130, 217, 219, 46, 50, 51, 62, 85, 88, 95, 99, 100, 102, 103, 160, 162, 163, 165, 206, 209, 267, 137/285, 45/386, 92/388, 94, 97, 154/382, 179/294/298, 179/294/299, 179/294/300, 179/294/301, 179/294/302, 5, 7, 10, 15, 28, 132, 127/304, 146, 131, 143/305, 294/306, 218/307, 218, 297/308, 297/308/377, 90/310, 115/311, 149/313, 173/314, 175/315, 226/316, 229, 230, 231, 239/317, 250/318, 250/319, 259/320, 259/321, 259/322, 264/323, 266/324, 242/293, 211/326, 215/327, 215/328, 216/329, 220, 270, 221/330, 90/332, 115/333, 149/335, 167/336, 173/337, 226/338, 227, 228, 238, 239/339, 250/340, 257, 259/341, 260, 265/342, 266/343, 270/344, 192/346, 193/347, 205/348, 211/349, 214/350, 215/351, 215/352, 216/353, 259/375, 115/355, 173/357, 192/359, 193/360, 239/361, 240, 256, 264/364, 266/365, 215/367, 215/368, 216/369, 225/371, 226/372, 73, 270/373, 117/356, 74/354, 270/374, 133, 74/309, 117/334, 74/331, 170/376, 250/362, 259/363, 211/366, 119, 120, 139, 111, 45, 154/381, 164, 208, 92, 98, 101, 154/383, 137/284, 44, 54, 154/384, 156, 202, 136, 158, 204/389, 268/391, 269, 154, 155, 159, 204/390, 268, 45/387, 47, 87, 93, 107, 110, 154/385, 204, 166/288, 268/392, 70/393, 74/394, 394/411, 152, 152/413, 303/398, 135, 152/397, 131/303, 151/287, 153, 157/399, 311/400, 133/401, 133/402, 86, 117/312, 133/403, 133/404, 133/405,133/406, 133/407, 221/370/410, 221/370, 182; 161, 178, 179, 180 (भाग) , 188, 191, 194, 196, 199, 241, 243, 179/294, 179/296, 84, 169, 172, 174, 195, 198, 200, 203, 210, 222, 242, 278, 215/292, 4, 6, 8, 9, 11, 13, 14, 36, 38, 42, 43, 48, 49, 52, 53, 55, 56, 57, 58, 71, 72, 77, 106, 134, 142, 143, 145, 147, 148, 151, 181 (भाग) , 184 (भाग) , 185, 186, 187, 190, 197, 212, 213, 223, 235, 236, 237, 246, 247, 251, 252, 253, 261, 271, 272, 274, 20/276, 66/277, 86/279, 89/280, 133/282, 149/286, 173/289, 175/290, 193/291, 1, 33, 125, 128, 129, 127.

अर्जित किए जाने वाले वन केडेस्ट्रल सर्वेक्षण के प्लाट संख्यांकों की सूची:

1. ग्राम – दुरूबागा :

1267 (भाग) , 1372 (भाग) , 1132 (भाग) , 1245 (भाग) , 1263 (भाग) , 1264, (भाग) , 1271 (भाग), 1273, 1275, 1280 (भाग) , 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1291, 1293, 1295, 1296, 1298, 1300, 1304, 1306, 1308, 1310 (भाग) , 1364 (भाग) , 1366, 1349 (भाग) , 1145 (भाग) , 1165 (भाग), 1255 (भाग) , 1135, 1133 (भाग) , 1136, 1308/01, 1308/02.

2. ग्राम – कातरबागा: 38 (भाग) , 277 (भाग) , 286 (भाग) , 292 (भाग), 295 (भाग) , 298, 307, 317, 327 (भाग) .

3. ग्राम – काथाफली: 2, 3, 55, 60, 239, 17, 18, 24, 27, 57, 156, 175, 178, 187, 189, 37/336.

4. ग्राम परमानंदपुर : 244, 275(भाग) , 179/295 (भाग) , 2, 3, 34, 35, 37, 39, 40, 41, 60, 64, 65, 67, 68, 78, 79, 81, 82, 83, 104, 105, 108, 112, 114, 126, 144, 166, 168, 176, 177, 183 (भाग) , 233, 234, 245 (भाग)

5. कहानुपहाड़ आरक्षित वन

6. हुन्डरखोल आरक्षित वन

सीमा वर्णन:

सेंट्रल माइन प्लानिंग एण्ड डिजाइन इन्स्टीच्यूट (सीएमपीडीआई) द्वारा तैयार की गई जियोलॉजिकल रिपोर्ट से वर्ल्ड जियोडेटिक सिस्टम (डब्ल्यूजीएस) 84 डेटम लाइन और यूनिवर्सल ट्रांसवर्स मर्केटर (यूटीएम) प्रोजेक्शन प्रणाली के साथ डीप साइड मनोहरपुर कोयला ब्लॉक की सीमा।

रेखा 1-2 : स्टेशन '1' से प्रारंभ होने वाली सीमा कातरबागा ग्राम में डीप साइड मनोहरपुर कोयला ब्लॉक के उत्तर-पश्चिमी कोने पर स्थित है और पूर्व दिशा की ओर जाती है और कातरबागा और दुरुबागा ग्रामों की सामान्य ग्राम की सीमा को छूती है। फिर सीमा दुरूबागा ग्राम में प्रवेश करती है, दुरुबागा-परमानंदपुर के ग्राम की सड़क से गुजरती है, फिर पूर्व की ओर चलती है और प्लॉट संख्या 1349 दुरुबागा ग्राम की (उत्तरी सीमा) के अंदर स्टेशन '2' के पूर्वोत्तर कोने में मिलती है ।

रेखा 2-3 : रेखा स्टेशन '2' से प्रारंभ होती है और दक्षिण दिशा की ओर चलती है और परमानंदपुर ग्राम और कहानुपहाड़ आरक्षित वन की सामान्य सीमा को छूती है । सीमा कहानुपहाड़ आरक्षित वन में प्रवेश करती है और कहानुपहाड़ आरक्षित वन काथाफली ग्राम की सामान्य सीमा को छूती है। फिर सीमा काथाफली ग्राम में प्रवेश करती है और स्टेशन '3' पर मिलती है अर्थात् दक्षिण-पूर्व कोने का स्टेशन, राजस्व प्लाट संख्या - 277 (पूर्वी सीमा) के अंदर। पूर्वी सीमा 'मनोहरपुर' कोयला ब्लॉक तक सीमित है।

रेखा 3-4 : रेखा स्टेशन '3' से प्रारंभ होती है और पश्चिम दिशा की ओर चलती है, काथाफली ग्राम और हुन्डरखोल आरक्षित वन की सामान्य सीमा को छूती है और स्टेशन '4' के दक्षिण-पश्चिम कोने का स्टेशन (दक्षिणी सीमा) से मिलती है।

रेखा 4-1 : रेखा स्टेशन '4' से प्रारंभ होती है और उत्तर दिशा की ओर चलती है, हुन्डरखोल आरक्षित वन कटाराबागा ग्राम की सामान्य सीमा को छूती है, फिर सीमा कटाराबागा ग्राम में प्रवेश करती है और स्टेशन से '1' के उत्तर-पूर्व कोने का स्टेशन (पश्चिमी सीमा) को पूरा करती है ।

[फा. सं. 43015/13/2019-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 16th July, 2020

S.O. 529.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 2225, dated the 01st January, 2020, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act) and published in the Gazette of India, Part II, Section 3, Sub-section (ii),dated the 04th January, 2020, the Central Government gave notice of its intention to acquire the land measuring 685.000 hectares (approximately) or 1692.635 acres (approximately) and all rights in or over such lands specified in the Schedule appended to that notification;

And, whereas, the competent authority in pursuance of section 8 of the said Act, has made his report to the Central Government;

And, whereas, the Central Government after considering the report aforesaid and after consulting the Government of Odisha is satisfied that the lands measuring 684.620 hectares (approximately) or 1691.730 acres (approximately) and all rights in or over such lands as described in the Schedule appended hereto should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the land measuring 684.620 hectares (approximately) or 1691.730 acres (approximately) and all rights in or over such lands as described in Schedule are hereby acquired.

The plan bearing number OCPL/CO/16-CBA, dated the 07th March, 2020 of the area covered by this notification may be inspected in the office of the Collector, District Sundargarh, Odisha or in the office of the Coal Controller, 1, Council House Street, Kolkata-700 001 or in the office of the Chief Executive Officer, Odisha Coal and Power Limited, Zone-A, Ground Floor, Fortune Towers, Bhubaneswar – 751023, Odisha.

SCHEDULE

Dip side Manoharpur Coal Block
IB Valley Coalfields
District Sundargarh, State -Odisha

[Plan bearing number OCPL/CO/16-CBA, dated the 07th March, 2020]

ALL RIGHTS:

(A) REVENUE LAND:

Sl. No.	Name of Village	Village Number/ Thana Number	Patwari/ Revenue Circle Name	Tahsil	District	Area in hectares (approx-mately)	Remarks
1.	Durubaga	70	Hemgir	Hemgir	Sundargarh	12.480	Part
2.	Katarbaga	69	Hemgir	Hemgir	Sundargarh	62.390	Part
3.	Kathafali	108	Ghumudasan	Hemgir	Sundargarh	208.030	Part
4.	Paramanandpur	107	Ghumudasan	Hemgir	Sundargarh	122.990	Part
Total: 405.890 hectares (approximately) or 1002.970 acres (approximately)							

(A) FOREST LAND:

Sl. No.	Name of Village	Village Number/ Thana Number	Patwari/ Revenue Circle Name	Tahsil	District	Area in hectares (approxi-mately)	Remarks
1.	Durubaga	70	Hemgir	Hemgir	Sundargarh	29.040	Part
2.	Katarbaga	69	Hemgir	Hemgir	Sundargarh	24.130	Part
3.	Kathafali	108	Ghumudasan	Hemgir	Sundargarh	18.630	Part
4.	Paramanandpur	107	Ghumudasan	Hemgir	Sundargarh	30.340	Part

5.	Kahnupahad RF	--	--	Hemgir	Sundargarh	10.520	Part
6.	Hundarkhol RF	--	--	Hemgir	Sundargarh	166.070	Part
Total: 278.730 hectares (approximately) or 688.760 acres (approximately)							

SUMMARY:

(A) Total Revenue Land : 405.890 hectares (approximately) or 1002.970 acres (approximately)
(B) Total Forest Land : 278.730 hectares (approximately) or 688.760 acres (approximately)
(C) Grand Total (A+B) : 684.620 hectares (approximately) or 1691.730 acres (approximately)

LIST OF REVENUE PLOT NUMBERS TO BE ACQUIRED:

1. Village –Durubaga :

1137 (Part), 1139 (Part), 1272, 1270 (Part), 1294/1676, 1294/1680, 1294/1681, 1294/1682, 1294/1683, 1294/1684, 1294, 1138 (Part), 1269 (Part), 1140 (Part), 1294/1685, 1282/2012, 1282/2015, 1282/2017, 1282/2018, 1282/2019, 1282/2020, 1282/2021, 1282/2036, 1282/2036/2082, 1282, 1277, 1278, 1279, 1290, 1280/2/1513 (Part), 1280/1/1514 (P), 1311 (Part), 2036/2089, 2036/2090, 1313 (Part), 1134, 1266 (Part), 1301, 1305, 1307, 1371 (Part), 1265, 1281, 1292, 1367 (Part), 1262 (Part), 1274, 1276, 1297, 1299, 1302, 1303, 1309, 1365, 1368 (Part).

2. Village –Katarbaga:

39 (Part), 40 (Part), 71 (Part), 76 (Part), 77 (Part), 103, 103/592, 104, 105, 105/455, 106, 107, 107/365, 107/431, 107/431/496, 107/432, 107/432/497, 108, 108/461, 109, 109/428, 428/452, 109/459, 111, 111/451, 111/429, 111/430, 112, 112/427, 116, 116/470, 116/471, 116/472, 116/473, 116/474, 116/475, 116/476, 118, 119, 120, 120/518, 120/530, 120/544, 120/552, 120/555, 555/570, 121, 121/443, 122, 123, 124, 124/519, 124/531, 124/545, 125, 126, 127, 128, 128/403, 128/421, 128/422, 128/422/488, 128/423, 128/426, 128/426/440, 129, 129/442, 129/434, 434/441, 130, 130/468, 130/468/580, 130/468/585, 131 (Part), 132 (Part), 134 (Part), 135, 135/575, 135/576, 135/581, 135/582, 135/582/623, 135/583, 136, 136/439, 136/485, 136/486, 137, 137/436, 138, 139, 139/584, 140, 140/469, 141, 141/580, 141/484, 142, 142/596, 596/604, 142/602, 143, 144, 145, 146, 146/465, 146/466, 146/467, 146/487, 147, 147/437, 147/462, 147/463, 147/464, 147/499, 147/500, 150/615, 150/617, 150, 151, 151/454, 151/454/628, 151/458, 152 (Part), 153 (Part), 154 (Part), 163 (Part), 164 (Part), 166 (Part), 252 (Part), 252/341 (Part), 253 (Part), 254, 254/372, 254/372/610, 254/373, 373/618, 254/374, 255, 255/489, 255/490, 255/490/557, 255/444/491, 255/444, 256, 257 (Part), 258, 259, 260, 261, 262, 263, 265, 266, 266/594, 266/595, 267, 268/375, 269, 270, 271, 271/507, 271/390, 272, 273, 274, 274/438, 276 (Part), 278 (Part), 288 (Part), 289 (Part), 290 (Part), 291, 293 (Part), 294, 294/410, 299, 300, 301, 301/605, 301/606, 301/607, 301/608, 302, 303, 305, 310, 310/502, 311, 311/503, 311/571, 311/572, 311/573, 311/574, 312, 312/479, 312/480, 312/481, 312/482, 312/483, 312/479/578, 312/480/579, 313, 318, 319, 327/377 (Part), 242, 49 (Part), 97 (Part), 98 (Part), 98/331, 99, 100, 101, 102, 110, 113, 114, 115, 117, 124/329, 148, 149, 264, 268, 275 (Part), 284 (Part), 285 (Part), 296, 297, 304, 306, 308, 309, 314, 315, 316, 320, 272/376, 321, 322, 323, 324, 325, 326, 328.

3. Village – Kathafali :

124, 28, 59, 62, 67, 91, 92, 93, 96, 97, 99, 102, 108, 110, 118, 125, 127, 135, 136, 148, 153, 167, 168, 172, 185, 191, 192, 202, 207, 217, 219, 220, 222, 236, 237, 207/340, 93/348, 106/350, 155/361, 193/365, 91/382, 91/383, 91/384, 91/385, 99/386, 99/387, 89, 90, 105, 107, 132, 130, 164, 213 (Part), 138, 128, 32, 33, 77, 78, 79, 80, 81, 84, 86, 87, 243, 76/347, 111, 13, 47, 49, 179, 101, 208 (Part), 69, 72, 94, 29/333, 31/337, 183, 180, 181, 182, 186, 203, 184/339, 147/357, 202/367, 244, 214 (Part), 226/512, 246/513, 247/514, 233/520, 273 (Part), 143, 19, 20, 21, 22, 120, 140/352, 195, 196 (Part), 197, 198, 194, 140, 144, 139, 140/353, 205, 206, 131, 395/539, 395/540, 395/541, 395/542,188/395, 177/1/389, 91/390, 91/391, 93/392, 99/393, 177/402, 177/398, 177/399,

177/400, 177/401, ,16, 50, 12/405, 8/407, 10/408, 11/409, 14/410, 9/418, 177/427, 177/419, 177/420, 177/421, 177/422, 177/423, 177/424, 215 (Part), 216, 177/426, 177/428, 177/429, 177/430, 177/431, 65, 65/543, 543/546, 65/544, 544/547, 65/545545/548, 103, 106, 109, 114, 115, 126, 152, 184, 221, 223, 223/343, 39, 41, 150, 104, 113, 65/432, 101/433, 103/434, 106/435, 109/436, 114/437, 115/438, 126/439, 52/440, 21/441, 23/442, 42, 39/443,150/444, 37, 121, 190, 99/394, 37/445, 36, 98, 158, 193, 241, 91/395, 37/446, 190/447, 121/448, 99/449, 127/450, 88, 88/538, 145, 33/451, 34, 176/452, 177/455,177/456,177/457, 177/458, 177/459, 177/460, 177/461, 177/462, 177/463, 177/464, 177/465, 177/466, 177/467, 177/468, 177/469, 176/470, 157/473, 35/472, 85, 85/471, 240, 35/474, 32/335, 82, 149, 201, 236/371, 21/475, 475/482, 37/476, 81/477, 86/478, 243/479, 173, 176/480, 76, 76/495, 176/481, 147, 68, 69/483, 73/484, 74, 75, 72/485, 73, 241/486, 241/487, 98/488, 98/489, 98/490, 432/491, 432/492, 65/493, 176/494, 176, 96/496, 237/497, 80/498, 80/499, 96/500, 237/505, 78/506, 19/507, 237/508, 217/509, 19/511, 233/515, 224, 226/521, 226 (Part), 232, 234/516, 226/522, 231/517, 234, 225, 231, 342/518, 235, 217/342, 64, 230/523, 233 (Part), 246 (Part), 247, 28/334, 194/524, 129, 129/525, 141, 244/526, 136/354, 244/528, 354/530, 244/531, 363/533, 244/534, 128/363, 188/395/536, 227, 369, 7, 31, 40, 43, 44, 45, 160, 166, 169, 170, 177, 218, 188/364, 66, 71, 95, 100, 112, 119, 122, 123, 133, 134, 137, 142, 146, 171, 69/346, 120/351, 142/355, 142/356, 8, 9, 10, 11, 12, 14, 15, 25, 26, 29, 32, 35, 38, 48, 52, 53, 54, 56, 61, 70, 83, 116, 117, 154, 157, 159, 161, 162, 163, 174, 200, 204, 276, 184/341, 59/344, 65/345, 97/349, 149/358, 86/359, 87/360, 160/362, 193/366, 202/368, 239/372, 243/373, 1, 4, 6, 23, 30, 46, 51 (Part), 58, 63, 151, 155, 165, 188 (Part), 199, 210, 238, 242 (Part), 245, 277 (Part), 284 (Part), 37/338, 5.

4. Village – Paramanandpur :

74, 90, 113, 115, 117, 149, 150, 167, 173, 175, 189, 192, 201, 205, 211, 214, 215, 216, 221, 224, 225, 226, 232, 248, 249, 250, 254, 255, 258, 259, 262, 263, 264, 265, 266, 273, 59, 61, 63, 66, 69, 70, 75, 76, 89, 91, 96, 141, 207, 18, 19, 29, 31, 157, 157/408, 408/412, 157/409, 17, 20, 21, 24, 25, 26, 30, 12, 16, 22, 23, 27, 32, 80, 118, 137, 138, 140, 170, 171, 133/281, 136/283, 178/297, 109, 116, 121, 122, 123, 124, 130, 217, 219, 46, 50, 51, 62, 85, 88, 95, 99, 100, 102, 103, 160, 162, 163, 165, 206, 209, 267, 137/285, 45/386, 92/388, 94, 97, 154/382, 179/294/298, 179/294/299, 179/294/300, 179/294/301, 179/294/302, 5, 7, 10, 15, 28, 132, 127/304, 146, 131, 143/305, 294/306, 218/307, 218, 297/308, 297/308/377, 90/310, 115/311, 149/313, 173/314, 175/315, 226/316, 229, 230, 231, 239/317, 250/318, 250/319, 259/320, 259/321, 259/322, 264/323, 266/324, 242/293, 211/326, 215/327, 215/328, 216/329, 220, 270, 221/330, 90/332, 115/333, 149/335, 167/336, 173/337, 226/338, 227, 228, 238, 239/339, 250/340, 257, 259/341, 260, 265/342, 266/343, 270/344, 192/346, 193/347, 205/348, 211/349, 214/350, 215/351, 215/352, 216/353, 259/375, 115/355, 173/357, 192/359, 193/360, 239/361, 240, 256, 264/364, 266/365, 215/367, 215/368, 216/369, 225/371, 226/372, 73, 270/373, 117/356, 74/354, 270/374, 133, 74/309, 117/334, 74/331, 170/376, 250/362, 259/363, 211/366, 119, 120, 139, 111, 45, 154/381, 164, 208, 92, 98, 101, 154/383, 137/284, 44, 54, 154/384, 156, 202, 136, 158, 204/389, 268/391, 269, 154, 155, 159, 204/390, 268, 45/387, 47, 87, 93, 107, 110, 154/385, 204, 166/288, 268/392, 70/393, 74/394, 394/411, 152, 152/413, 303/398, 135, 152/397, 131/303, 151/287, 153, 157/399, 311/400, 133/401, 133/402, 86, 117/312, 133/403, 133/404, 133/405,133/406, 133/407, 221/370/410, 221/370, 182; 161, 178, 179, 180 (Part), 188, 191, 194, 196, 199, 241, 243, 179/294, 179/296, 84, 169, 172, 174, 195, 198, 200, 203, 210, 222, 242, 278, 215/292, 4, 6, 8, 9, 11, 13, 14, 36, 38, 42, 43, 48, 49, 52, 53, 55, 56, 57, 58, 71, 72, 77, 106, 134, 142, 143, 145, 147, 148, 151, 181 (Part), 184 (Part), 185, 186, 187, 190, 197, 212, 213, 223, 235, 236, 237, 246, 247, 251, 252, 253, 261, 271, 272, 274, 20/276, 66/277, 86/279, 89/280, 133/282, 149/286, 173/289, 175/290, 193/291, 1, 33, 125, 128, 129, 127.

List of Forest Cadastral Survey Plot numbers to be acquired:

1. Village – Durubaga:

1267 (Part), 1372 (Part), 1132 (Part), 1245 (Part), 1263 (Part), 1264, (Part), 1271 (Part), 1273, 1275, 1280 (Part), 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1291, 1293, 1295, 1296, 1298, 1300, 1304, 1306, 1308, 1310 (Part), 1364 (Part), 1366, 1349 (Part), 1145 (Part), 1165 (Part), 1255 (Part), 1135, 1133 (Part), 1136, 1308/01, 1308/02.

2. **Village Katarbaga:** 38 (Part), 277 (Part), 286 (Part), 292 (Part), 295 (Part), 298, 307, 317, 327 (Part).

3. **Village Kathafali:** 2, 3, 55, 60, 239, 17, 18, 24, 27, 57, 156, 175, 178, 187, 189, 37/336.

4. **Village Paramanandpur:** 244, 275(Part), 179/295 (Part), 2, 3, 34, 35, 37, 39, 40, 41, 60, 64, 65, 67, 68, 78, 79, 81, 82, 83, 104, 105, 108, 112, 114, 126, 144, 166, 168, 176, 177, 183 (Part), 233, 234, 245 (Part).

5. Kahnupahad Reserve Forest.

6. Hundarkhol Reserve Forest.

Boundary description:

The boundary of Dip side Manoharpur Coal Block obtained with World Geodetic System (WGS) 84 Datum line and Universal Transverse Mercator (UTM) projection system from Geological Report prepared by Central Mine Planning and Design Institute (CMPDI).

Line 1-2 : The boundary starts from station '1' is situated on the north-western corner of Dipside Manoharpur Coal Block in village Katarabaga and runs towards east direction touches the common village boundary of Katarabaga and Durubaga villages. Then the boundary enters into village Durubaga passes the village road of Durubaga-Pararmanandpur, then runs towards East and meets at station '2' the northeast corner, inside the plot no. 1349 of Durubaga village (the northern boundary).

Line 2-3 : The line starts from station '2' and runs towards south direction touches the common boundary of Paraamanandpur village and Kahnupahad reserve forest. The boundary enters into the Kahnupahad reserve forest and touches the common boundary of Kahnupahad reserve forest and Kathafali village. Then the boundary enters into Kathaphali village and meets at station '3' i.e. the southeast corner station, inside the revenue plot number – 277 (the eastern boundary). The Eastern boundary is limited to 'Manoharpur' coal block.

Line 3-4 : The line starts from station '3' and runs towards west direction touches the common boundary of Kathaphali village and Hundarkhol reserve forest and meets station '4' the southwest corner station (the southern boundary).

Line 4-1 : The line starts from station '4' and runs towards north direction touches the common boundary of Hundarkhol reserve forest and Katarbaga village, then the boundary enters to Katarbaga village and meets the station '1' the northwest corner station (the western boundary).

[F. No. 43015/13/2019-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

नई दिल्ली, 16 जुलाई, 2020

का.आ. 530.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है;

अत:, उक्त अधिसूचना में वर्णित क्षेत्र में अंतर्विष्ट ब्यौरे रेखांक संख्या सी-I(ई)III/एफयूआर/0520/958, तारीख 6 मई, 2020, का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड, राजस्व और भूमि विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर - 440 001, महाराष्ट्र के कार्यालय में या मुख्य महाप्रबंधक, खोज प्रभाग, केन्द्रीय खान योजना एवं डिजाइन संस्थान, गोंडवाना पैलेस, कांके रोड, रांची - 834 001 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता - 700 001 के कार्यालय में या जिला कलक्टर, जिला नागपुर, महाराष्ट्र के कार्यालय में किया जा सकता है;

अत: अब केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है ।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, -

(i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा ; अथवा

(ii) उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गयी किसी कार्यवाही से हुई या होने वाली संभावित किसी क्षति के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; अथवा

(iii) उक्त अधिनियम की धारा (13) की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा ।

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, उमरेड क्षेत्र, या विभागाध्यक्ष, भूमि और राजस्व विभाग, वेस्टर्न कोलफील्ड्स लिमिटेड, कोल ईस्टेट, सिविल लाईन्स, नागपुर - 440 001, महाराष्ट्र को भेज सकेगा ।

अनुसूची

दिनेश (मकरधोकड़ा - III) विस्तार विवृत खान
उमरेड़ क्षेत्र
जिला नागपुर, महाराष्ट्र

(रेखांक संख्या सी- I (ई)III/एफयूआर/0520/958, तारीख 6 मई, 2020)

भाग - I

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
दहेगांव	16	उमरेड	नागपुर	56.07	3.74	20.25	80.06	भाग
कुल :				56.07	3.74	20.25	80.06	

भाग - II

क्र.सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
					निजी	सरकारी	वन		
1.	दहेगांव	16	उमरेड	नागपुर	23.69	0.41	2.77	26.87	भाग
2.	मकरधोकडा	17	उमरेड	नागपुर	21.41	1.75	2.24	25.40	भाग
	कुल :				45.10	2.16	5.01	52.27	

भाग - III

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
मकरधोकडा	17	उमरेड	नागपुर	5.14	0.00	0.00	5.14	भाग
कुल :				5.14	0.00	0.00	5.14	

भाग - IV

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
मकरधोकडा	17	उमरेड	नागपुर	2.87	0.00	0.00	2.87	भाग
कुल :				2.87	0.00	0.00	**2.87**	

भाग - V

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
मकरधोकडा	17	उमरेड	नागपुर	1.46	0.00	0.00	1.46	भाग
कुल :				**1.46**	0.00	0.00	**1.46**	

भाग - VI

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
मकरधोकडा	17	उमरेड	नागपुर	0.76	0.00	0.00	0.76	भाग
कुल :				**0.76**	0.00	0.00	**0.76**	

भाग - VII

क्र. सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
					निजी	सरकारी	वन		
1	मकरधोकडा	17	उमरेड	नागपुर	7.19	0.00	8.14	15.33	भाग
2	बोपेश्वर	17	उमरेड	नागपुर	3.88	0.14	0.00	4.02	भाग
3	कटारा	22	उमरेड	नागपुर	11.64	0.90	3.32	15.86	भाग
कुल :					**22.71**	**1.04**	**11.46**	**35.21**	

भाग - VIII

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
मकरधोकडा	17	उमरेड	नागपुर	3.36	0.00	0.00	3.36	भाग
कुल :				**3.36**	0.00	0.00	**3.36**	

भाग - IX

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
बोपेश्वर	17	उमरेड	नागपुर	2.00	0.00	0.00	2.00	भाग
कुल :				**2.00**	0.00	0.00	**2.00**	

भाग - X

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
बोपेश्वर	17	उमरेड	नागपुर	2.02	0.00	0.00	2.02	भाग
कुल :				**2.02**	0.00	0.00	**2.02**	

भाग - XI

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
हेवती	18	उमरेड	नागपुर	72.41	2.36	0.00	74.77	भाग
कुल :				**72.41**	**2.36**	0.00	**74.77**	

भाग - XII

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
हेवती	18	उमरेड	नागपुर	16.17	0.00	0.00	16.17	भाग
कुल :				**16.17**	**0.00**	0.00	**16.17**	

भाग - XIII

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
सुकली	18	उमरेड	नागपुर	2.55	0.00	0.00	2.55	भाग
कुल :				**2.55**	**0.00**	0.00	**2.55**	

भाग - XIV

ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में			कुल क्षेत्रफल	टिप्पणियां
				निजी	सरकारी	वन		
सुकली	16	उमरेड	नागपुर	12.07	1.20	5.70	18.97	भाग
कुल :-				**12.07**	**1.20**	**5.70**	**18.97**	

कुल क्षेत्रफल (भाग –I से भाग – XIV) : निजी भूमि - 244.69 हेक्टर

: सरकारी भूमि - 10.50 हेक्टर

: वन भूमि - 42.42 हेक्टर

कुल क्षेत्रफल: 297.61 हेक्टर (लगभग)

या 735.39 एकड़ (लगभग)

भाग - I

ग्राम दहेगांव के सीमा अर्जन के भीतर प्लाट संख्यांक :

43, 44, 62/1- 62/2- 62/3- 62/4- 62/5- 62/6, 63/1- 63/2- 63/3- 63/4- 63/5, 64/1- 64/2- 64/3, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79/1- 79/2- 79/3, 109/1- 109/2, 112, 113, 184, 192, सड़क, नाला.

वन भूमि :

66, 82 (भाग), 102, 103, 104, 105 (भाग), 108, 110, 111, 186.

भाग - II

ग्राम दहेगांव के सीमा अर्जन के भीतर प्लाट संख्यांक :

37, 38, 39/1- 39/2, 40, 41, 42, 115, 117, 119, 120, 123, 124, 125, 126/1- 126/2, 129, सड़क, नाला.

वन भूमि :

114, 116, 121, 122, 145 (भाग).

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर प्लाट संख्यांक :

19 (भाग), 24, 51, 52, 53, 54, 55, 56, 57, 58, 59, सड़क.

वन भूमि :

25 (भाग).

भाग - III

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर प्लाट संख्यांक :

90/2, 91/1, 92/1- 92/2- 92/3.

भाग - IV

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर प्लाट संख्यांक :

70, 77, 78.

भाग - V

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर के प्लाट संख्यांक :

71, 72.

भाग - VI

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर प्लाट संख्यांक :

136/3- 136/4.

भाग - VII

ग्राम मकरधोकड़ा के सीमा अर्जन के भीतर प्लाट संख्यांक :

340/1- 340/2, 341, 344/1- 344/2, 572.

वन भूमि :

343.

ग्राम बोपेश्वर के सीमा अर्जन के भीतर प्लाट संख्यांक :

125, 126, 127, 128, 129, नाला.

ग्राम कटारा के सीमा अर्जन के भीतर प्लाट संख्यांक :

2/1- 2/2- 2/3, 3, 4, 37/1- 37/2- 37/3, 130, सड़क.

वन भूमि :

39.

भाग - VIII

ग्राम मकरधोकडा के सीमा अर्जन के भीतर प्लाट संख्यांक :

338, 339, 342.

भाग - IX

ग्राम बोपेश्वर के सीमा अर्जन के भीतर प्लाट संख्यांक :

32 (भाग).

भाग - X

ग्राम बोपेश्वर के सीमा अर्जन के भीतर प्लाट संख्यांक :

43/1- 43/2.

भाग - XI

ग्राम हेवती के सीमा अर्जन के भीतर प्लाट संख्यांक :

120/1- 120/2- 120/3- 120/4, 121, 122, 123, 124, 125/1- 125/2, 126, 127, 155, 156, 159/1/अ- 159/1/ब- 159/2- 159/3, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169/1- 169/2- 169/3, 170/1- 170/2- 170/3, 188, 189, 190, 191, 192/1- 192/2- 192/3, 194, 195, 196/1- 196/2, 197, 198, 199, 200, 201, 202/1- 202/2- 202/3, 203/1/अ- 203/1/ब- 203/2/अ- 203/2/ब, 204, 205, 217/1- 217/2- 217/3, 218, 219/1- 219/2, नाला, सड़क.

भाग - XII

ग्राम हेवती के सीमा अर्जन के भीतर प्लाट संख्यांक :

100/1- 100/2, 101/1- 101/2- 101/3, 107/2/अ- 107/2/ब, 108/1- 108/2, 109/1- 109/2, 110/1- 110/2.

भाग - XIII

ग्राम हेवती के सीमा अर्जन के भीतर प्लाट संख्यांक :

107/1, 108.

भाग - XIV

ग्राम सुकली के सीमा अर्जन के भीतर प्लाट संख्यांक :

70/1- 70/2, 74, 75/1- 75/2, 79, 83, 93, सड़क.

वन भूमि :

72 (भाग), 73 (भाग).

सीमा वर्णन :

भाग – I

क – ख : रेखा ग्राम दहेगांव में प्लाट संख्या 44 के उत्तर-पश्चिम कोने पर स्थित बिन्दु 'क' से आरंभ होकर पूर्व दिशा में प्लाट संख्या 44 की बाह्य सीमा से होकर, फिर उत्तर दिशा में प्लाट संख्या 62 की बाह्य सीमा से होकर फिर पुन: पूर्व दिशा में प्लाट संख्यांक 62, 79 की बाह्य सीमा से होती हुई प्लाट संख्या 79 के उत्तर-पूर्व कोने पर स्थित बिन्दु 'ख' पर मिलती है।

ख – ग : रेखा बिन्दु 'ख' से आरंभ होकर दक्षिण दिशा में प्लाट संख्या 79 की बाह्य सीमा से होती हुई पूर्व दिशा में प्लाट संख्यांक 77 और 76 की बाह्य सीमा से होती हुई, फिर दक्षिण दिशा में प्लाट संख्यांक 76 और 75 की बाह्य सीमा से होकर पूर्व दिशा में मुडकर वनभूमि के प्लाट संख्या 82 में से होती हुई नाला पार करती है और दक्षिण दिशा में सड़क पार कर बिन्दु 'ग' पर मिलती है।

ग – घ : रेखा बिन्दु 'ग' से आरंभ होकर दक्षिण-पूर्व दिशा में सड़क से लगकर होती हुई प्लाट संख्यांक 105, 108, 186 की बाह्य सीमा से लगकर होती हुई ग्राम दहेगांव और मकरधोकरा की सम्मलित ग्राम सीमा पर स्थित 'घ' पर मिलती है।

घ – ड. : रेखा बिन्दु 'घ' से आरंभ होकर उत्तर-पश्चिम दिशा में रेल अधिग्रहीत भूमि की उत्तर दिशा से लगकर होती हुई तथा प्लाट संख्यांक 186, 108, 113, 112, 110, 111, 69, 68, 64, 43 की दक्षिण सीमा से लगकर गुजरती है और प्लाट संख्या 43 के पश्चिम कोने पर बिन्दु 'ड.' पर मिलती है ।

ड. – क : रेखा बिन्दु 'ड.' से आरंभ होकर उत्तर दिशा में सड़क से लगकर होती हुई फिर प्लाट संख्या 192, 44 की पश्चिम सीमा से लगकर गुजरती है और आरंभिक बिन्दु 'क' पर मिलती होती है।

भाग – II

च - छ : रेखा ग्राम दहेगांव में बिन्दु 'च' से आरंभ होती है , पूर्व दिशा में प्लाट संख्या 42 की उत्तर सीमा से लगकर गुजरती है और बिन्दु 'छ' पर मिलती है ।

छ – ज : रेखा बिन्दु 'छ' से आरंभ होती है, दक्षिण-पूर्व दिशा में रेल अधिग्रहीत भूमि के दक्षिण तट से लगकर होती हुई प्लाट संख्यांक 40, 39, 126, 125, 124, 122, 121 की उत्तर सीमा से लगकर गुजरती है और बिन्दु 'ज' पर मिलती है।

ज - झ : रेखा बिन्दु 'ज' से आरंभ होकर दक्षिण-पूर्व दिशा में रेल अधिग्रहित भूमि के दक्षिण तट से लगकर होती हुई प्लाट संख्यांक 119, 115, 114, 145 की उत्तर सीमा से लगकर होती हुई ग्राम मकरध्रोकरा में प्रवेश करती है और प्लाट संख्या 25 के उत्तर-पूर्व कोने पर स्थित बिन्दु 'झ' पर मिलती है।

झ - ञ : रेखा बिन्दु 'झ' से आरंभ होकर दक्षिण-पूर्व दिशा में रेल अधिग्रहीत भूमि के दक्षिण तट से लगकर होती हुई प्लाट संख्यांक 24, 19(भाग), 52, 51, 53 की उत्तर सीमा से लगकर होती हुई बिन्दु 'ञ' पर मिलती है ।

ञ - ट : रेखा बिन्दु 'ञ' से आरंभ होकर दक्षिण-पूर्व दिशा में रेल अधिग्रहित भूमि के दक्षिण तट से लगकर होती हुई तथा प्लाट संख्यांक 53, 54, 55, 56, 57, 58, 59 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ट' पर मिलती है ।

ट - ठ : रेखा बिन्दु 'ट' से आरंभ होकर दक्षिण-पश्चिम दिशा में प्लाट संख्यांक 58, 59 की बाह्य सीमा से लगकर होती हुई सड़क पार करती है फिर उत्तर-पश्चिम दिशा में सड़क से लगकर होती हुई प्लाट संख्यांक 19, 24 की बाह्य सीमा से लगकर होती हुई प्लाट संख्या 24 के दक्षिण-पूर्व छोर पर बिन्दु 'ठ' पर मिलती है ।

ठ - ड : रेखा बिन्दु 'ठ' से आरंभ होकर प्लाट संख्यांक 24, 25 की बाह्य सीमा से लगकर होती हुई नाला पार कर ग्राम दहेगांव में बिन्दु 'ड' पर मिलती है ।

ड - ढ : रेखा बिन्दु 'ड' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 114, 115, 116, 117, 119, 120, 121, 123 की बाह्य सीमा से लगकर होती हुई मिलती है और बिन्दु 'ढ' पर मिलती है ।

ढ – ण : रेखा बिन्दु 'ढ' से आरंभ होकर प्लाट संख्यांक 123, 129, 125, 126, 39 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ण' पर मिलती है ।

ण – त : रेखा बिन्दु 'ण' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 39, 37, 38 की दक्षिण सीमा से लगकर होती हुई बिन्दु 'त' पर मिलती है ।

त – च : रेखा बिन्दु 'त' से आरंभ होकर उत्तर दिशा में प्लाट संख्यांक 38, 41, 42 की बाह्य सीमा से लगकर होती हुई ग्राम दहेगांव में आरंभिक बिन्दु 'च' पर समाप्त होती है ।

भाग - III

थ – द : रेखा ग्राम मकरधोकरा में बिन्दु 'थ' से आरंभ होती है और पूर्व दिशा में प्लाट संख्यांक 92, 91/1-90/2 की उत्तर सीमा से लगकर गुजरती है और बिन्दु 'द' पर मिलती है।

द - ध : रेखा बिन्दु 'द' से आरंभ होती है और दक्षिण दिशा में प्लाट संख्या 90/2 की बाह्य सीमा से लगकर गुजरती है और बिन्दु 'ध' पर मिलती है।

ध - न: रेखा बिन्दु 'ध' से आरंभ होती है और पश्चिम दिशा में प्लाट संख्यांक 90/2, 91/1, 92 की दक्षिण सीमा से लगकर गुजरती है और बिन्दु 'न' पर मिलती है।

न - थ: रेखा बिन्दु 'न' से आरंभ होती है और उत्तर दिशा में प्लाट संख्या 92 की बाह्य सीमा से लगकर ग्रुजरती है और आरंभिक बिन्दु 'थ' पर समाप्त होती है।

भाग - IV

प – फ : रेखा ग्राम मकरधोकरा में बिन्दु 'प' से आरंभ होती है, दक्षिण-पूर्व दिशा में प्लाट संख्यांक 78, 77, 70 की उत्तर सीमा से लगकर गुजरते हुए बिन्दु 'फ' पर मिलती है।

फ – ब : रेखा बिन्दु 'फ' से आरंभ होती है, दक्षिण दिशा में प्लाट संख्या 70 की बाह्य सीमा से लगकर गुजरते हुए बिन्दु 'ब' पर मिलती है।

ब - भ : रेखा बिन्दु 'ब' से आरंभ होती है,पश्चिम दिशा में प्लाट संख्यांक 70, 77, 78 की दक्षिण सीमा से लगकर गुजरती है, बिन्दु 'भ' पर मिलती है।

भ – प : रेखा बिन्दु 'भ' से आरंभ होती है, उत्तर-पूर्व दिशा में प्लाट संख्या 78 की बाह्य सीमा से लगकर होती हुई आरंभिक बिन्दु 'प' पर समाप्त होती है।

भाग - V

म-य-क1-

ख1-म : यह भाग ग्राम मकरधोकरा में प्लाट संख्यांक 71 और 72 को संलग्नित करता है।

भाग – VI

ग1-घ1-

ड.1-च1-ग1: यह भाग ग्राम मकरधोकरा में प्लाट संख्यांक 136/3 और 136/4 को संलग्नित करता है।

भाग – VII

छ1 - ज1 : रेखा ग्राम मकरधोकरा में बिन्दु 'छ1' से आरंभ होती है, पूर्व दिशा में प्लाट संख्यांक 572, 344 की उत्तर सीमा से लगकर गुजरती है और बिन्दु 'ज1' पर मिलती है।

ज1 – झ1 : रेखा बिन्दु 'ज1' से आरंभ होकर पूर्व दिशा में रेल अधिग्रहीत भूमि के दक्षिण किनारे से लगकर होती हुई प्लाट संख्यांक 343, 341, 340, की उत्तर सीमा से लगकर गुजरती है, ग्राम बोपेश्वर में प्लाट संख्यांक 128, 127, 126 और 125 की उत्तरी सीमा से लगकर गुजरती है, फिर ग्राम कटारा में प्लाट संख्यांक 2, 130, 3, 4 की उत्तरी सीमा से लगकर गुजरती है और ग्राम कटारा में बिन्दु 'झ1' पर मिलती है।

झ1 – ञ1 : रेखा बिन्दु 'झ1' से आरंभ होती है, पश्चिम दिशा में सड़क से लगकर गुजरती है, फिर दक्षिण दिशा में प्लाट संख्यांक 37, 39 की बाह्य सीमा से लगकर होती हुई ग्राम कटारा में बिन्दु 'ञ1' पर मिलती है।

ञ1 – ट1 : रेखा बिन्दु 'ञ1' से आरंभ होकर पश्चिम दिशा में प्लाट संख्या 39 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ट1' पर मिलती है।

ट1 – ठ1 : रेखा बिन्दु 'ट1' से आरंभ होकर उत्तर दिशा में प्लाट संख्यांक 39, 37, 3 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ठ1' पर मिलती है।

ठ1 – ड1 : रेखा बिन्दु 'ठ1' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 3, 2 की बाह्य सीमा से लगकर होती हुई फिर ग्राम बोपेश्वर की ग्राम सीमा से लगकर होती हुई फिर ग्राम मकरधोकरा की सीमा से लगकर होती हुई ग्राम मकरधोकरा में प्लाट संख्या 341 के दक्षिण-पश्चिम कोने पर बिन्दु 'ड1' पर मिलती है।

ड1 – ढ1 : रेखा बिन्दु 'ड1' से आरंभ होकर पश्चिम दिशा में प्लाट संख्या 343 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ढ1' पर मिलती है।

ढ1 – ण1 : रेखा बिन्दु 'ढ1' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 343, 344 की बाह्य सीमा से लगकर होती हुई ग्राम मकरधोकरा में बिन्दु 'ण1' पर मिलती है।

ण1 – छ1 : रेखा बिन्दु 'ण1' से आरंभ होकर उत्तर दिशा में प्लाट संख्यांक 344, 572 की बाह्य सीमा से लगकर होती हुई ग्राम मकरधोकरा में आरंभिक बिन्दु 'छ1' पर समाप्त होती है।

भाग – VIII

त1 - थ1 : रेखा ग्राम मकरधोकरा में बिन्दु 'त1' से आरंभ होकर उत्तर दिशा में प्लाट संख्या 342 की पश्चिम सीमा से लगकर होती हुई बिन्दु 'थ1' पर मिलती है।

थ1 - द1 : रेखा बिन्दु 'थ1' से आरंभ होकर पूर्व दिशा में प्लाट संख्यांक 342, 338 339 की उत्तरी सीमा से लगकर होती हुई ग्राम मकरधोकरा एवं ग्राम बोपेश्वर की सम्मिलित ग्राम सीमा पर स्थित बिन्दु 'द1' पर मिलती है।

द1 - ध1 : रेखा बिन्दु 'द1' से आरंभ होकर दक्षिण-पश्चिम दिशा में ग्राम मकरधोकरा एवं ग्राम बोपेश्वर की सम्मिलित ग्राम सीमा से लगकर होती हुई प्लाट संख्या 339 के दक्षिण-पूर्व छोर पर बिन्दु 'ध1' पर मिलती है।

ध1 - त1 : रेखा बिन्दु 'ध1' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 339, 348, 342 की दक्षिण सीमा से लगकर होती हुई आरभिक बिन्दु 'त1' पर समाप्त होती है।

भाग - IX

न1-प1-फ1-

ब1-न1 : यह भाग ग्राम बोपश्वर में प्लाट संख्या 32 को संलग्नित करता है।

भाग - X

भ1-म1-य1-

क2-भ1 : यह भाग ग्राम बोपश्वर में प्लाट संख्या 43 को संलग्नित करता है।

भाग - XI

ख2 – ग2 : रेखा ग्राम हेवती में प्लाट संख्या 127 के पश्चिम कोने पर स्थित बिन्दु 'ख2' से आरंभ होकर उत्तर-पूर्व दिशा में नहर के दक्षिण तट से लगकर होती हुई प्लाट संख्या 156 के उत्तर-पश्चिम कोने पर बिन्दु 'ग2' पर मिलती है।

ग2 – घ2 : रेखा बिन्दु 'ग2' से आरंभ होकर पूर्व दिशा में प्लाट संख्यांक 156, 159 की उत्तरी सीमा से लगकर फिर ग्राम हेवती की ग्राम सीमा से होती हुई प्लाट संख्या 205 के उत्तर-पूर्व कोने पर तथा हेवती ग्राम सीमा पर स्थित बिन्दु 'घ2' पर मिलती है।

घ2 - ड.2 : रेखा बिन्दु 'घ2' से आरंभ होकर दक्षिण दिशा में ग्राम हेवती में प्लाट संख्यांक 205, 217, 219 की पूर्व सीमा से लगकर होती हुई बिन्दु 'ड.2' पर मिलती है।

ड.2 –च2 : रेखा बिन्दु 'ड.2' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 219, 196, 195, 194, 192, 190, 189, 170, 120 की बाह्य सीमा से लगकर होती हुई बिन्दु 'च2' पर मिलती है।

च2 –ख2 : रेखा बिन्दु 'च2' से आरंभ होकर उत्तर-पश्चिम दिशा में प्लाट संख्यांक 120, 125, 126, 127 की बाह्य सीमा से लगकर होती हुई आरंभिक बिन्दु 'ख2' पर समाप्त होती है।

भाग - XII

छ2 – ज2 : रेखा ग्राम हेवती में बिन्दु 'छ2' से आरंभ होकर उत्तर दिशा में प्लाट संख्यांक 101/1- 101/2-101/3 की बाह्य सीमा से लगकर होती हुई फिर पूर्वदिशा में प्लाट संख्यांक 100, 108 की बाह्य सीमा से लगकर होती हुई नहर के तट पर स्थित बिन्दु 'ज2' पर मिलती है।

ज2 – झ2 : रेखा बिन्दु 'ज2' से आरंभ होकर दक्षिण-पूर्व दिशा में नहर के दक्षिण किनारे से लगकर होती हुई प्लाट संख्या 110 के दक्षिण-पूर्व कोने पर बिन्दु 'झ2' पर मिलती है।

झ2 – ञ2 : रेखा बिन्दु 'झ2' से आरंभ होकर पश्चिम दिशा में प्लाट संख्या 110 की बाह्य सीमा से लगकर होती हुई बिन्दु 'ञ2' पर मिलती है।

ञ2 – छ2 : रेखा बिन्दु 'ञ2' से आरंभ होकर पश्चिम दिशा में प्लाट संख्यांक 108, 107/2अ, 101/1 की बाह्य सीमा से लगकर होती हुई ग्राम हेवती में आरंभिक बिन्दु 'छ2' पर समाप्त होती है।

भाग - XIII

ट2-ठ2-ड2-

ढ2-ट2 : यह भाग ग्राम सुकली में प्लाट संख्यांक 107/1 और 108 को संलग्नित करता है।

भाग - XIV

ण2 – त2 : रेखा बिन्दु 'ण2' से आरंभ होकर पूर्व दिशा में प्लाट संख्यांक 70/1, 79 की बाह्य सीमा से लगकर होती हुई फिर प्लाट संख्या 72 मे से होती हुई सड़क पार करती है फिर पूर्व दिशा में प्लाट संख्यांक 75, 74, 83 की बाह्य सीमा से लगकर होती हुई बिन्दु 'त2' पर मिलती है।

त2 – थ2 : रेखा बिन्दु 'त2' से आरंभ होकर दक्षिण दिशा से होती हुई सड़क पार कर प्लाट संख्या 93 की बाह्य सीमा से लगकर होती हुई बिन्दु 'थ2' पर मिलती है।

थ2 – द2 : रेखा बिन्दु 'थ2' से आरंभ होकर पश्चिम दिशा में दिनेश विवृत खदान के लिए पूर्व में अधिग्रहीत भूमि की उत्तरी सीमा से लगकर होती हुई सड़क के पूर्वी तट पर तथा प्लाट संख्या 70/2 के दक्षिण कोने पर स्थित बिन्दु 'द2' पर मिलती है ।

द2 – ण2 : रेखा बिन्दु 'द2' से आरंभ होकर उत्तर दिशा में दिनेश विवृत खदान के लिए पूर्व में अधिग्रहित भूमि की सीमा से लगकर होती हुई फिर सड़क के पूर्वी तट से लगकर होती हुई ग्राम सुकली में प्लाट संख्या 70/1 के उत्तर-पश्चिम छोर पर आरंभिक बिन्दु 'ण2' पर समाप्त होती है ।

[फा. सं. 43015/11/2020-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

New Delhi, the 16th July, 2020

S.O. 530.—Whereas, it appears to the Central Government that coal is likely to be obtained from the lands in the locality described in the Schedule annexed hereto;

And Whereas, the plan bearing number C-I(E)III/FUR/0520/958, dated the 6th May, 2020, containing the details of the areas described in the said Schedule may be inspected at the office of the Western Coalfields limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur – 440 001, Maharashtra or at the office of the Chief General Manager, Exploration Division, Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi – 834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata – 700001 or at the office of the District Collector, District Nagpur, Maharashtra ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule.

Any person interested in the land described in the said Schedule may, -

(i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land; or

(ii) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act ; or

(iii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Office of the Area General Manager, Western Coalfields Limited, Umrer Area or Head of Department, Land and Revenue Department, Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur – 440 001, Maharashtra within a period of ninety days from the date of publication of this notification.

SCHEDULE

Dinesh (Makardhokra - III) Expansion Opencast Mine

Umrer Area

District Nagpur, Maharashtra

[Plan bearing number C-I(E)III/FUR/0520/958, dated the 6th May, 2020]

Part-I

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Dahegoan	16	Umred	Nagpur	56.07	3.74	20.25	80.06	Part
Total:				56.07	3.74	20.25	80.06	

Part-II

Sr. No.	Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
					Tenancy	Government	Forest		
1	Dahegaon	16	Umred	Nagpur	23.69	0.41	2.77	26.87	Part
2	Makardhokra	17	Umred	Nagpur	21.41	1.75	2.24	25.40	
Total:					45.10	2.16	5.01	52.27	

Part-III

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Makardhokra	17	Umred	Nagpur	5.14	0.00	0.00	5.14	Part
Total:				5.14	0.00	0.00	5.14	

Part-IV

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Makardhokra	17	Umred	Nagpur	2.87	0.00	0.00	2.87	Part
Total:				2.87	0.00	0.00	2.87	

Part-V

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Makardhokra	17	Umred	Nagpur	1.46	0.00	0.00	1.46	Part
Total:				1.46	0.00	0.00	1.46	

Part-VI

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Govern-ment	Forest		
Makardhokra	17	Umred	Nagpur	0.76	0.00	0.00	0.76	Part
Total:				0.76	0.00	0.00	0.76	

Part-VII

Sr. No.	Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
					Tenancy	Govern-ment	Forest		
1.	Makardhokra	17	Umred	Nagpur	7.19	0.00	8.14	15.33	Part
2.	Bopeshwar	17	Umred	Nagpur	3.88	0.14	0.00	4.02	
3.	Katara	22	Umred	Nagpur	11.64	0.90	3.32	15.86	
	Total:				22.71	1.04	11.46	35.21	

Part-VIII

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Makardhokra	17	Umred	Nagpur	3.36	0.00	0.00	3.36	Part
Total:				3.36	0.00	0.00	3.36	

Part-IX

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Bopeshwar	17	Umred	Nagpur	2.00	0.00	0.00	2.00	Part
Total:				2.00	0.00	0.00	2.00	

Part-X

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Bopeshwar	17	Umred	Nagpur	2.02	0.00	0.00	2.02	Part
Total:				2.02	0.00	0.00	2.02	

Part-XI

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Hewati	18	Umred	Nagpur	72.41	2.36	0.00	74.77	Part
Total:				72.41	2.36	0.00	74.77	

Part-XII

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Hewati	18	Umred	Nagpur	16.17	0.00	0.00	16.17	Part
Total:				16.17	0.00	0.00	16.17	

Part-XIII

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Sukli	18	Umred	Nagpur	2.55	0.00	0.00	2.55	Part
Total:				2.55	0.00	0.00	2.55	

Part-XIV

Name of Village	Patwari Circle number	Tahsil	District	Area in hectares			Total	Remarks
				Tenancy	Government	Forest		
Sukli	16	Umred	Nagpur	12.07	1.20	5.70	18.97	Part
Total:				12.07	1.20	5.70	18.97	

Total Area (Part–I to Part – XIV) : Tenancy land - 244.69 hectares
: Government land - 10.50 hectares
: Forest land - 42.42 hectares

Total land : 297.61 hectares (approximately)
or 735.39 acres (approximately)

Part-I

Plot numbers within acquisition boundary in village Dahegaon:
43, 44, 62/1- 62/2- 62/3- 62/4- 62/5- 62/6, 63/1- 63/2- 63/3- 63/4- 63/5, 64/1- 64/2- 64/3, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79/1- 79/2- 79/3, 109/1- 109/2, 112, 113, 184, 192, Road, Nallah.

Forest land :
66, 82 (Part), 102, 103, 104, 105 (Part), 108, 110, 111, 186.

Part-II

Plot numbers within acquisition boundary in village Dahegaon:
37, 38, 39/1- 39/2, 40, 41, 42, 115, 117, 119, 120, 123, 124, 125, 126/1- 126/2, 129, Road, Nallah.

Forest land :
114, 116, 121, 122, 145 (Part).

Plot numbers within acquisition boundary in village Makardhokra:
19 (Part), 24, 51, 52, 53, 54, 55, 56, 57, 58, 59, Road.

Forest land :
25 (Part).

Part-III

Plot numbers within acquisition boundary in village Makardhokra:
90/2, 91/1, 92/1- 92/2- 92/3.

Part-IV

Plot numbers within acquisition boundary in village Makardhokra:
70, 77, 78.

Part-V

Plot number within notification boundary in village Makardhokra:

71, 72.

Part-VI

Plot numbers within acquisition boundary in village Makardhokra:
136/3- 136/4.

Part-VII

Plot numbers within acquisition boundary in village Makardhokra:
340/1- 340/2, 341, 344/1- 344/2, 572.

Forest land :
343.

Plot numbers within acquisition boundary in village Bopeshwar:
125, 126, 127, 128, 129, Nallah.

Plot numbers within acquisition boundary in village Katara:
2/1- 2/2- 2/3, 3, 4, 37/1- 37/2- 37/3, 130, Road.

Forest land :
39.

Part-VIII

Plot numbers within acquisition boundary in village Makardhokra:
338, 339, 342.

Part-IX

Plot numbers within acquisition boundary in village Bopeshwar:
32 (Part).

Part-X

Plot numbers within acquisition boundary in village Bopeshwar:
43/1- 43/2.

Part-XI

Plot numbers within acquisition boundary in village Hewati:
120/1- 120/2- 120/3- 120/4, 121, 122, 123, 124, 125/1- 125/2, 126, 127, 155, 156, 159/1/A- 159/1/B- 159/2- 159/3, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169/1- 169/2- 169/3, 170/1- 170/2- 170/3, 188, 189, 190, 191, 192/1- 192/2- 192/3, 194, 195, 196/1- 196/2, 197, 198, 199, 200, 201, 202/1- 202/2- 202/3, 203/1/A- 203/1/B- 203/2/A- 203/2/B, 204, 205, 217/1- 217/2- 217/3, 218, 219/1- 219/2, Nallah, Road.

Part-XII

Plot numbers within acquisition boundary in village Hewati:
100/1- 100/2, 101/1- 101/2- 101/3, 107/2/A- 107/2/B, 108/1- 108/2, 109/1- 109/2, 110/1- 110/2.

Part-XIII

Plot numbers within acquisition boundary in village Hewati:
107/1, 108.

Part-XIV

Plot numbers within acquisition boundary in village Sukli:
70/1- 70/2, 74, 75/1- 75/2, 79, 83, 93, Road.

Forest land :
72 (Part), 73 (Part).

Boundary description:

Part - I

A – B : Line starts from Point 'A' on north west corner of Plot number 44 in village Dahegaon, passes in east direction along the outer boundary of Plot number 44, passes in north direction along the outer boundary of Plot number 62, then passes in east direction along outer boundary of Plot numbers 62 and 79 and meets at Point 'B' on north-east corner of Plot number 79.

B – C : Line starts from Point 'B', passes in south direction along the outer boundary of Plot number 79, passes in East along the outer boundary of Plot numbers 77 and 76, passes in south direction along the outer boundary of Plot numbers 76 and 75, then turns in east direction through forest land Plot number 82, crosses the nallah, passes in north direction and meets at Point 'C' across the road.

C – D : Line starts from Point 'C', passes in south-east direction along the road and outer boundary of Plot numbers 105, 108, 186 and meets at Point 'D' on common boundary of villages Dahegaon and Makardhokra.

D – E : Line starts from Point 'D' passes in north-west direction along the north side of railway acquired land and passes along the south boundary of Plot numbers 186, 108, 113, 112, 110, 111, 69, 68, 64, 43 and meets at Point 'E' on west corner of Plot number 43.

E – A : Line starts from Point 'E' passes in north direction along the road, then passes along the west boundary of Plot numbers 192, 44 and meets at starting Point 'A'.

Part – II

F – G : Line starts from Point 'F' in village Dahegaon, passes in east direction along the north boundary of Plot number 42 and meets at Point 'G'.

G – H : Line starts from Point 'G' passes in south-east direction along the south side of railway acquired land and along the north boundary of Plot numbers 40, 39, 126, 125, 124, 122, 121 and meets at Point 'H'.

H – I : Line starts from Point 'H' passes in south-east direction along the south side of railway acquired land and along the north boundary of Plot numbers 119, 115, 114, 145, passes in village Makardhokra and meets at Point 'I' at north-east corner of Plot number 25 in village Makardhokra.

I – J : Line starts from Point 'I' passes in south-east direction along the south side of railway acquired land and along the north boundary of Plot numbers 24, 19(P), 52, 51, 53 and meets at Point 'J'.

J – K : Line starts from Point 'J' passes in south-east direction along the south side of railway acquired land and outer boundary of Plot numbers 53, 54, 55, 56, 57, 58, 59 and meets at Point 'K'.

K – L : Line starts from Point 'K' passes in south–west direction along outer boundary of Plot numbers 58, 59 then crosses the road, then passes in north-west direction along the road, then passes along the outer boundary of Plot numbers 19, 24 and meets at Point 'L' on south-east corner of Plot number 24.

L – M : Line starts from Point 'L' passes along the outer boundary of Plot numbers 24, 25, crosses the Nallah and meets at Point 'M' in village Dahegaon.

M – N : Line starts from Point 'M' passes in west direction along the outer boundary of Plot numbers 114, 115, 116, 117, 119, 120, 121, 123 and meets at Point 'N'.

N – O : Line starts from Point 'N' passes along the outer boundary of Plot numbers 123, 129, 125, 126, 39 meets at Point 'O'.

O – P : Line starts from Point 'O' passes in west direction along the south boundary of Plot numbers 39, 37, 38 and meets at Point 'P'.

P – F : Line starts from Point 'P' passes in north direction along the outer boundary of Plot numbers 38, 41, 42 and ends at starting Point 'F' in Village Dahegaon.

Part - III

Q – R : Line starts from Point 'Q' in village Makardhokra, passes in east direction along the north boundary of Plot numbers 92, 91/1- 90/2 and meets at Point 'R'.

R – S : Line starts from Point 'R' passes in south direction and meets at Point 'S' along the outer boundary of Plot number 90/2.

S – T : Line starts from Point 'S' passes in west direction along the south boundary of Plot numbers 90/2, 91/1, 92 and meet at Point 'T'.

T – Q : Line starts from Point 'T' passes in north direction along the outer boundary of Plot number 92 and ends at starting Point 'Q'

Part - IV

U – V : Line starts from Point 'U' in village Makardhokra, passes in south-east direction along north boundary of Plot numbers 78, 77, 70 meet at Point 'V'.

V – W : Line starts from Point 'V' passes in south direction along outer boundary of Plot number 70 meet at Point 'W'.

W – X : Line starts from Point 'W' passes in west direction along the south boundary of Plot numbers 70, 77, 78 and meet at Point 'X'.

X – U : Line starts from Point 'X' passes in north-east direction along the outer boundary of Plot number 78 and ends at starting Point 'U'.

Part - V

Y-Z-A1-B1-Y : This part encompasses the plot numbers 71 and 72 in village Makardhokra.

Part - VI

C1-D1-E1-F1-C1 : This part encompasses the Plot numbers 136/3 and 136/4 in village Makardhokra.

Part - VII

G1-H1 : Line starts from Point 'G1' in village Makardhokra, passes in east direction along the outer north boundary of Plot numbers 572, 344 and meets at Point 'H1'.

H1-I1 : Line starts from Point 'H1', passes in wast direction along the south side of railway acquired land and along the north boundary of Plot numbers 343, 341, 340, passes through village Bopeshwar along the north boundary of Plot numbers 128, 127, 126 and 125, then passes in village Katara along the north boundary of Plot numbers 2, 130, 3, 4 and meets at Point 'I1' in village Katara.

I1-J1:- Line starts from Point 'I1' passes in west direction along the Road, then passes in South direction along the outer boundary of Plot numbers 37, 39 of village Katara and meets at Point 'J1'.

J1-K1:- Line starts from Point 'J1' passes in west direction along the outer boundary of Plot number 39 and meets at Point 'K1'.

K1-L1:- Line starts from Point 'K1' passes in north direction along the outer boundary of Plot numbers 39, 37, 3 and meets at Point 'L1'.

L1-M1:- Line starts from Point 'L1' passes in west direction along the outer boundary of Plot numbers 3, 2, then passes along the boundary of village Bopeshwar, then passes long the boundary of village Makardhokra and meets at Point 'M1' on south-west corner of Plot number 341 in village Makardhokra.

M1-N1:- Line starts from Point 'M1' passes in west direction along the outer boundary of Plot number 343 and meets at Point 'N1'.

N1-O1:- Line starts from Point 'N1' passes in west direction along the outer boundary of Plot numbers 343, 344 of village Makardhokra and meets at Point 'O1'.

O1-G1:- Line starts from Point 'O1' passes in north direction along the outer boundary of Plot numbers 344, 572 and ends at Point 'G1' in village Makardhokra.

Part-VIII

P1-Q1:- Line starts from Point 'P1' in village Makardhokra, passes in north direction along the west boundary of Plot number 342 and meets at Point 'Q1'.

Q1-R1:- Line starts from Point 'Q1' passes in east direction along the north boundary of Plot numbers 342, 338, 339 and meets at Point 'R1' on common village boundary of villages Makardhokra and Bopeshwar.

R1-S1:- Line starts from Point 'R1', passes in south-west direction along the common village boundary of villages Makardhokra and Bopeshwar and meets at Point 'S1' on South-east corner of Plot number 339.

S1-P1:- Line starts from Point 'S1' passes in west direction along the south boundary of Plot numbers 339, 338, 342 and ends at Point 'P1'.

Part-IX

T1-U1-V1-W1-T1:- This Part encompasses single plot number 32 in village Bopeshwar.

Part-X

X1-Y1-Z1-A21-X1:- This Part encompasses single plot number 43 in village Bopeshwar.

Part-XI

B2-C2:- Line starts from Point 'B2' on west corner of Plot number 127 in village Hewati, passes in north-east direction along the south boundary of canal and meets at Point 'C2' on north-west corner of Plot number 156.

C2-D2:- Line starts from Point 'C2' passes in east direction along the north boundary of Plot numbers 156, 159, then passes along the village boundary of Hewati and meets at Point 'D2' on north-east corner of Plot number 205 on boundary of village Hewati.

D2-E2:- Line starts from Point 'D2' passes in south Direction in village Hewati along the East boundary of Plot numbers 205, 217, 219 and meets at Point 'E2'.

E2-F2:- Line starts from Point 'E2' passes in west direction along the outer boundary of Plot numbers 219, 196, 195, 194, 192, 190, 189, 170, 120 and meets at Point 'F2'.

F2-B2:- Line starts from Point 'F2' passes in north-west direction along the outer boundary of Plot numbers 120, 125, 126, 127 and ends at starting Point 'B2' in village Hewati.

Part-XII

G2-H2:- Line starts from Point 'G2' in village Hewati, passes in north direction along the outer boundary of Plot numbers 101/1- 101/2- 101/3, then passes in east direction along the outer boundary of Plot numbers 100, 108 and meets at Point 'H2' at the bank of the canal.

H2-I2:- Line starts from Point 'H2' passes in south-east direction along south bank of canal and meets at Point 'I2' on south-east corner of plot number 110.

I2-J2:- Line starts from Point 'I2' passes in west direction along the outer boundary of Plot number 110 meets at Point 'J2'.

J2-G2:- Line starts from Point 'J2' passes in west direction along the outer boundary of Plot numbers 108, 107/2A, 101/1 and ends at starting Point 'G2' in village Hewati.

Part-XIII

K2-L2:-M2-N2-K2:- This part encompasses Plot numbers 107/1 and 108 in village Sukli.

Part-XIV

O2-P2: Line starts from Point 'O2' passes in west direction along the outer boundary of Plot numbers 70/1, 79, passes though Plot number 72, crosses road, continues in east direction along the outer boundary of Plot numbers 75, 74, 83 and meets at Point 'P2'.

P2-Q2:- Line starts from Point 'P2' passes in south direction crossing the road, passes along the outer boundary of Plot number 93 and meets at Point 'Q2'.

Q2-R2:- Line starts from Point 'Q2' passes in west direction along the north boundary of land already acquired for Dinesh Opencast Mine and meets at Point 'R2' on south corner of Plot number 70/2 at east side of the road.

R2-O2:- Line starts from Point 'R2' passes in north direction along the land already acquired for Dinesh Opencast Mine, then continues in north along the east side of the road and ends at starting Point 'O2' on north-west corner of plot number 70/1 in village Sukali.

[F. No. 43015/11/2020-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 3 जुलाई, 2020

का.आ. 531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उप निदेशक, प्रसार भारती, क्षेत्रीय कर्मचारी प्रशिक्षण संस्थान, भुवनेश्वर, ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 60/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.06.2020 को प्राप्त हुए थे ।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 3rd July, 2020

S. O. 531.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2016) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Dy Director, Prasar Bharati, Regional Staff Training Institute,, Bhubaneswar, Odisha & Others, and their workmen which were received by the Central Government on 03.06.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 60 OF 2016

Dated Bhubaneswar, the 20th March, 2020

Present:

Shri B.C.Rath
Presiding Officer,
CGIT-cm-Labour Court, Bhubaneswar.

Between:

1. The Dy. Director, Prasar Bharati,
Regional Staff Training Institute,
C.S.Pur, Bhubaneswar – 17.

2. The Director
National Academy of Broad Cast and Multi Media
A.I.R. & Door Darshan, Prasar Bharati Building,
New Delhi – 110001.

3. The Managing Director
Industrial Security Agency, Prachi Vihar, Palasuni,
P.O: G.G.P Colony, Bhubaneswar – 751025. ...First party management

AND

Sri Pramod Kumar Naik
C/o. At – VR-5/1, Unit – 3,
Kharvelnagar, Bhubaneswar – 751001. ...Second party workman

Appearances:

Sri B. K. Behera : For first party management No. 1 and 2.

Sri R. K. Sahoo : For first party management No. 3.

Sri P. K. Naik : Second party workman himself.

AWARD

The Award is directed against an application preferred by the applicant-workman Sri Pramod Kumar Naik resorting to the provisions of Section 2-A sub-section (2) and sub-section (3) of the Industrial Disputes Act, 1947 (14 of 1947) (here in after referred to as 'the Act') wherein and whereby the applicant-workman has raised the present dispute in regard to termination of his service by the management.

2. It is the case of the applicant-workman as emerging from his statement of claim that he had been working as Mali (Gardner) in the office of the opposite party-managements No.1 and 2 from February, 2002 till he was refused employment on 1.11.2015. He was discharging his duty with utmost sincerity and honesty to the satisfaction of his authorities. As he and some other workers were not extended E.P.F and E.S.I. benefits, they lodged a complaint before the Regional Commissioner of EPF and Regional Director of ESI, Bhubaneswar. They also raised a dispute before the RLC (C), Bhubaneswar for non-payment of minimum wages as fixed by the Central Government from time to time. According to him, 20 numbers of workmen including himself were engaged in between 2000 to 2012 directly by the management No.1 and 2 and they were allowed to continue in

different jobs being shown as engaged through different contractors 8 in numbers in between 2002 to 2015. Though, contractors were changed from time to time, the workmen remained same. It is the claim of the applicant-workman that when he brought to the notice of the authorities of EPF, ESI and labour machinery regarding non-extension of benefits of EPF, ESI and minimum wages, the opposite party-management No.1 with connivance of so called outsourcing agency (contractor) refused him employment with effect from 1.11.2015 without complying the requirement of Section 25-F of the Act. Though, he worked for more than 240 days continuously and uninterruptedly in each calendar year in between the date of his initial appointment till refusal of employment, he was not paid retrenchment compensation and notice pay as well as he was not issued with any notice before his disengagement. He was never issued with any show cause for his deficiency in service. His employment/engagement was directly under the control and supervision of the opposite party-managements No.1 and 2 and the contractor opposite party management No.3 was shown his employer in official papers only when he was refused employment. Hence he raised a dispute before the labour machinery (ALC (C),Bhubaneswar). But, the conciliation before the labour machinery failed and a certificate in this regard was issued. Accordingly, the applicant-workman has preferred the case directly resorting to the provision of sub-sections (2) and (3) of Section 2-A of the Act.

3. The opposite party-managements No.1 and 2 have resisted the claim taking a stand that no relationship of employer and employee existed between them and the applicant-workman. It is their plea that the office of the opposite party-management No. 2 started functioning in the year 2000. The contractors/outsourcing agencies are being engaged from time to time to carry out certain works of the opposite party-management like deployment of security, gardening, data entry operation and messengers. The applicant-workman was never engaged by the said management and as such, question does not arise for refusal of employment to the applicant-workman by the said opposite party-management No. 2. It is their further plea that the disputant workman was very irregular in his duty for which complaint was made to his employer contractor opposite party-management No. 3. That apart, the work order issued to the management No. 3 was completed in the year 2016 and work order was issued to a new outsourcing agency (contractor) who was at liberty to engage contract labourers of his choice. The opposite party-managements No. 1 and 2 have no business or concern with such engagement of contract laborers by the said outsourcing agency. Hence, they are not liable in any manner for any disengagement or refusal of employment to the disputant workman by the opposite party-management No. 3 contractor. On the above pleading, prayer has been made by the opposite party managements No.1 and 2 for dismissal of the statement of claim so far they are concerned.

4. The management No.3 contractor has filed a separate written statement taking a stand that his term of contract with management No.2 was completed on 7.4.2014. After completion and termination of such contract the disputant workman resigned from his agency. His wages and other statutory benefits like EPF and ESI dues were disbursed to him and the applicant-workman has no legitimate dues to receive from him. According to him the applicant-workman was engaged as a Gardener and he was not willing to perform the duty of Security Guard. It has been pleaded that a work order was issued to him by the management No. 2 to provide manpower with effect from 1.11.2015 and as per the term and condition of the work order there was no requirement of a gardener. When the applicant-workman was approached for his engagement as a Security Guard, he declined to accept the job of security guard. Thus, a stand is taken by the opposite party-management No.3 contractor that the applicant-workman had abandoned the job on his own volition and he was never refused employment. As such, his statement of claim has no merit for consideration.

5. On the aforesaid pleadings of the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

i) Whether the application under Section 2-A(2) of the applicant is maintainable under the Industrial Disputes Act ?

ii) Whether the action of the management of M/s. Industrial Security Agency, Contractor Establishment of Prasar Bharati, Regional Staff Training Centre, Bhubaneswar in terminating the services of Shri Pramod Kumar Naik, Mali/Gardener by way of refusal of employment with effect from 1.11.2015 is legal and/or justified ?

iii) What relief should be granted ?

6. To substantiate his claim, the applicant-workman has examined three witnesses including himself as W.W.1 to W.W.3 and relied upon the documents like copies of letter of the Conciliation Officer-cum-A.L.C (C), PF deposit Account slip of Nirakar Security and Intelligence Services on 3.11.2011, ESI deposit slip of Nirakar Security and Intelligence Services, letter dated 14.1.2016 of the AIR, DD, Bhubaneswar (Prasar Bharati), EPF accounts slip of the year 2011-12 and 2012-13, details of wages payment through Bank in the

year 2014 and 2015 and two photographs marked as Ext. 1 to Ext.7 whereas, the opposite party-managements have examined three witnesses including an official of management No.2 and the contractor (management No.3) himself

FINDINGS

7. All the issues being inter-linked to each other, are taken into consideration simultaneously for the sake of convenience.

8. It appears from the pleadings advanced by the parties and their evidence that the disputant workman and some others were engaged through different contractors/outsourcing agencies to perform various nature of duties in the establishment of the opposite party-managements No. 1 and 2. It is elicited from the evidence of management witnesses that the applicant-workman was engaged as a Gardener. The applicant-workman claims that he was working as a Gardener in the premises of the opposite party-management No.2 from the year 2002. Such averment and evidence of the applicant-workman is not seriously disputed. There is also no controversy that the applicant-workman was not engaged from 1.11.2015 onwards. It is also in the evidence and admitted by the management that he continued in the job of gardener from 2002 till he was refused employment with effect from 1.11.2015 onwards. He was doing the gardening work being shown engaged through different contractors/outsourcing agencies including the opposite party-management No.3. It is elicited from his cross-examination that he was paid wages through contractors. Neither the opposite party-managements No.1 and 2 nor the opposite party management No.3 contractor has disputed the claim of the applicant-workman that he and others were employed continuously and uninterruptedly for 13 years to perform the duties in the establishment of the management No.2. It is also emerging from the pleadings and evidence of the parties that the contractors/outsourcing agencies were changed from time to time and they entered into agreements with the opposite party-management No.2 to provide manpower as per the terms and conditions of the agreements. Thus it is established that the manpower remains the same whereas the contractors/outsourcing agencies were changed from time to time. Though, it has been claimed by the opposite party-managements as well as management witnesses that the applicant-workman was irregular in service and he was not willing to perform any other duty than gardening, the witnesses of the managements have admitted that the applicant-workman was never issued with any show cause for deficiency of his service. Further, there is no evidence to suggest that the applicant workman was ever issued with any notice or show cause for his unauthorized absence from duty or his voluntary abandonment of the job. On the other hand, no serious dispute is raised as to continuous and uninterrupted engagement of the applicant-workman in the job of gardening. Neither it has been pleaded nor it has been established that the applicant-workman was paid notice pay and retrenchment compensation when the agreement/contract of the management No.3 was completed or terminated with effect from 7.4.2014. On the other hand, it is admitted by the opposite party managements that the opposite party-management No.3 was issued with work order to provide manpower in certain categories with effect from 1.11.2015. For argument sake if it is accepted that manpower in the category of gardener was not required by the opposite party-managements No.1 and 2, there is evidence to show that manpower is being provided by the opposite party-management No.3 contractor for the job of Security Guards. Hence the management No.3 could have deployed the applicant-workman in such nature of job even if it is accepted that gardening work was entrusted to some other contractor. Since the evidence of the opposite party-managements is wanting to establish that the applicant-workman has abandoned the job on his own volition, it is to be presumed that he was refused employment with effect from 1.11.2015. Such refusal of employment amounts to retrenchment. Further more, the applicant-workman was not extended any benefits like notice pay and retrenchment compensation before his dis-engagement despite he is found to have worked as a gardener continuously and uninterruptedly for 13 years. Hence refusal of employment to him after 1.11.2015 amounts to retrenchment and it was illegal and unjustified keeping in view of Section 25-F of the Act.

9. Coming to the issue of maintainability of the application in the eye of law, it is the stand of the opposite party-managements No.1 and 2 that there being no employer and employee relationship with the applicant-workman the case is not maintainable against them. They are also not liable in any manner for the alleged illegal and unjustified retrenchment of the applicant-workman. As such, no award can be directed against them. It is the contention of the opposite party management No.3 that the agreement/contract for providing manpower for the purpose of gardening having been terminated he has no legal obligation to ensure employment to the applicant-workman after 1.11.2015 onwards. The applicant-workman has categorically stated that he was paid wages by the opposite party-management No.3. There is also no evidence or pleading on the part of the applicant-workman to show that the opposite party-managements No.1 and 2 had appointed him as a Gardener or they paid wages to him directly for any period during his employment as a Gardener. Hence it may be said that the employer and employee relationship is wanting between the managements No.1 and 2 and the applicant-workman. Keeping in view that the management No.3 had engaged the disputant to work as

gardener in the establishment of the opposite party managements No.1 and 2 and he was paid wages by the management No.3 contractor/outsourcing agency. Further, relationship of employer and employee does not exist normally an employer and a contractor or the servant of independent contractor. Where an employer retains or assume control over the means and method by which for work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of such a contractor. In such a situation the mere fact of formal employment by an independent contractor will not release the liability of master.

It is emerging from the evidence of the parties including the documents/agreements relating to supply of manpower that the employees supplied by the contractor employer are to work under the control of the principal employer i.e. managements No.1 and 2. In that event, it can be held that the independent contractor management No.3 is created or he is operating as a subterfuge and the employees engaged through the contractor will be regarded as the servant of the principal employer. That apart, provisions of Contract Labour Act, 1970 mandating liability of principal employer in regard to payment of wages to the contract labourers cannot be over-sighted in the present situation and admitted fact that the engagement of disputant as a gardener in the premises of opposite party management No.1 and he is hired through the opposite party management No.3. In case of any Award in favour of the disputant or direction for payment of back wages etc., the management is required to ensure the payment of such back wages to the contractor labourers by it contractor employer. Section 18 of the Act makes a provision regarding persons on whom settlements and Awards are binding. As per sub-clause (3) (b) of the said Section an Award by the Tribunal/Labour Court is binding on all other parties also, who have been summoned to appear in the proceedings as parties to the dispute, unless the Court or Tribunal records the opinion that they were so summoned without prior cause. In the above back grounds, the pleading and argument advanced by the managements that the reference is not maintainable against them on account of non-existence of relationship of employer and employee has no merit. Accordingly, the contention raised in this regard by the managements No. 1 and 2 is rejected.

10. However, the opposite party-management No.3 being the real employer of the applicant-workman, is legally liable and accountable for the retrenchment of the applicant-workman since the said retrenchment/refusal of employment was made violating the requirement of Section 25-F of the Act. The applicant-workman has approached the Tribunal resorting to the provision of Section 2-A of the Act. He has filed a certificate from the Conciliation Officer regarding failure of conciliation proceeding and he immediately raised a dispute before this Tribunal. The application is filed within three years of refusal of employment. The dispute relates to refusal of employment to him which can be termed as retrenchment. Provision of sub-clause (3) (b) of Section 18 of the Act makes a party to the proceeding to be bound by the Award. The managements No. 1 and 2 have been impleaded/noticed in the reference being principal employer and in the above back drops the application preferred by the applicant-workman is maintainable against them.

11. Coming to the question of relief to which the applicant-workman is entitled, it is well settled that an order of retrenchment passed in violation of Section 25-F of the Act although may be set aside but, an award of reinstatement shall not be automatic since relief of reinstatement may not be the natural consequence in all cases of illegal termination. It is mandate of settled principle of the Hon'ble Apex Court that while deciding relief to be given to the workman on account of his retrenchment or termination being illegal, the Court has to take the source of employment, the method of employment, the term and condition of employment/contract of service, the quantum of the wages/pay and the mode of the payments to consideration as they are the relevant factors. Hence, the Tribunal has to exercise its discretion keeping in view all the relevant circumstances while granting a relief for illegal retrenchment or termination. But, the discretion must be exercised in a judicious and judicial manner.

12. Coming to the case at hand, it has been clearly established that the applicant-workman gave service to the managements No.1 and 2 as a Gardener for 13 years after being engaged or appointed by different contractors/outsourcing agencies including the opposite-party management No.3 contractor. He was never issued with any show cause or notice for deficiency of his service. His employer the opposite party-management No.3 has only taken a plea for such refusal of employment to him that his contract/agreement for providing manpower for the purpose of gardening being terminated or completed and the applicant workman being unwilling to discharge the duty of Security Guard, he (contractor) was not in a position to continue him (workman) in employment. There is no material/evidence except a oral denial by the management witnesses to establish that the applicant had ever refused to work as a Security Guard. It is in the evidence that the opposite party-management No.3 is still acting as a service provider for the opposite party-managements No.1 and 2 on the strength of an agreement. It is coming-forth from the evidence of the parties that the work order is issued to the opposite party-management No.3 for providing manpower for deployment of security guards in the establishment of the management No.2. There is nothing on the record to suggest that the applicant-workman is not eligible to work as a Security Guard. There is no pleading or evidence of the management No.3

outsourcing agency/contractor that persons engaged by him for deployment as Security Guards in the establishment of the management No.1 and 2 are the appointees senior to the applicant-workman i.e. the persons engaged security guards were employed by him prior to the employment of the disputant workman. Hence, the disputant workman has preference right to continue in the employment of the establishment of the management No.3 on the principle of "first come last go". It can not be also over-looked that it is not seriously disputed by the opposite party managements that same set of employees/contract labourers worked in the establishment of opposite party management No.1 and being engaged through different contractors/outsourcing agencies whereas, the contractors/outsourcing agencies were changed from time to time. Hence, the opposite party managements No.1 and 2 are having an obligation to see that none of such contract labourers be deprived of getting employment opportunity till workmen are hired to work in their establishment unless there is some valid reasons. In the above facts and circumstances reinstatement of the disputant workman seems to be appropriate relief in the case at hand. That apart, as per settled principles a terminated worker should not be denied reinstatement unless there was some other weighty reasons for adopting the course of grant of compensation instead of reinstatement.

13. Having regard to the facts and reasons high-lighted above, it would be appropriate to direct the management No.3 either to reinstate with 25% (twenty five percent) back wages and deploy the applicant-workman as a Gardener or security guard or in similar nature of work for which the management No.3 has contractual obligation with the management No.1 and 2 or to pay a compensation of Rs. 5,00,000/- (Rupees five lacks only) in lieu of reinstatement on account of termination of the applicant being found illegal due to violation of Section 25-F of the Act. Keeping in view the provision of the Contract Labour Act, that the principal employer is to ensure the payment of wages to the contract labourer and provision of sub-clause (3) (b) of Section 18 of the Act the management No.1 and 2 are liable for the compensation in case of the management No.3 fails to comply the Award. The Award is to be given effect within two months of the Notification of the Award failing which the applicant workman is entitled to simple interest at the rate of 8% (eight percent) per annum on the compensation amount.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य अभियंता (मुख्यालय), एमईएस, पश्चिमी कमान, चंडीमंदिर, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 11/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.05.2020 को प्राप्त हुए थे।

[सं. एल-13012/01/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2014) of the Central Government Industrial-Tribunal-cum Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Engineer (HQ), MES, Western Command, Chandimandir Chanigar & Others, and their workmen which were received by the Central Government on 20.05.2020.

[No. L-13012/01/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.11/2014
Registered on:-18.06.2014

1. The President, MES Contract Workers Union, Tehsil & Dist. Solan (Himachal Pradesh).
2. Khushi Ram & 22 Others. ...Workmen/Union

Versus

1. The Chief Engineer (HQ) MES, Western Command, Chandimandir.
2. The Garrison Engineer, MES, Shimla Hills, Kasauli, Solan (Himachal Pradesh). ...Respondents/Managements

AWARD

Passed on:-04.03.2020

Central Government vide Notification No. L-13011/01/2014-IR(DU) Dated 02.06.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management in terminating the services of workmen (list Enclosed) and not considering them against the vacant position is legal, just and valid? If not, to what relief these workmen are entitled to and from which date?"

1. Both the parties were put to notice and workmen/union filed its statement of claim, with the averment, that petitioner no.1 is an M.E.S. Contract Workers Union, Subathu, District Solan (H.P.), duly registered and prosecuting the cases of its members/workmen whose services have been terminated by the respondent-management illegally in violation of provisions of Contract Labour(Regulation and Abolition) Act, 1970 and the Industrial Disputes Act, 1947, copy of which is attached as Annexure P-1. All the workmen mentioned in attached list were working for the last many years and performing jobs of skilled as well as unskilled labourers/helpers in different trades as Pump Operators, Electricians, Pipe Fitters, Helpers, Mates, Mazdoors etc. so as to maintain and provide smooth supply of water and electricity round the clock during day and night to all residences offices and other installations of MES located at Subathu, Dagshai, Jutogh and Kasauli. They were engaged directly by respondent no.2 but were being shown under one or other contractor with an ulterior object to deny them legal dues and the various legal rights and protections available to them under the Labour Enactments and law of the land and their work was of a perennial nature and not of a sporadic or intermittent nature. Almost all these contractors were not having any valid licences and MES-Management had got itself registered under Contract Labour (Regulation and Abolition) Act, 1970. The petitioner-workmen were in fact employed directly by MES-Management and not by contractors and these contractors were inducted merely as intermediaries by the principal employer/respondent-management so as to deny these petitioner/workmen their rightful due. If the complete records of respondent-management are summoned and perused by Hon'ble Court, it would be clear that they were working under direct supervision and control of principal employer/respondent-management and were also being paid their wages in case directly by officer/officers of principal employer/respondent-management at rates of unskilled labourers. Their attendances were being marked by the officers/offices of principal employer. All the workmen were being paid very low wages than the wages fixed for the unskilled labour by concerned competent authorities from time to time under the Minimum Wages Act. They were forced to work for 12 hours a day while directly employed employees by MES-Management for similar job work for eight hours and petitioner workmen were never provided other benefits/facilities which were being enjoyed by directly employed employees of principal employer. The termination of services of petitioner-workmen by the respondent-management without compliance of provisions of the Industrial Disputes Act, 1947 deserves to be declared invalid. The respondent-management issued a notice for filing up 1529 posts of skilled category in different trades in the pay scale of Rs.5200-20200 in year 2012 under MES Recruitment 2012 for which educational qualifications were ITI in trade and age from 18 to 27 year. Some of the present workmen were ITI or matriculates they also applied but their claims were rejected on the ground that they were overage and those who were neither ITI nor Matriculates, their claims were rejected being overage and

unqualified for the posts. The claimants/workmen filed OA No.947/HP/2012 in Hon'ble Central Administrative Tribunal, Chandigarh, which was rejected by the Hon'ble Tribunal on 07.08.2013 vide order Annexure P-4. Thus, in a very clandestine manner their services have been terminated by the respondent-management without compliance of provisions of Industrial Disputes Act, 1947 and no notice or pay in lieu of notice or compensation has been given to the petitioner-workmen in terms of Section 25(F) of Industrial Disputes Act, 1947. It is therefore prayed that the petitioner-workmen may be reinstated in service with full back wages with all other consequential reliefs.

2. Respondent-management filed its written statement, alleging therein that no union exists in the Station which is recognized by the Department. The petitioners-claimants have never been engaged directly or indirectly by the respondent. The employees as stated in the claim are engaged by the contractor at their own and department is not concerned with this process. The petitioners-workmen were working on contract basis through a contractor which is engaged by the management after complying with the standard operating procedure (SOP) which is annexed as Annexure R-1 for a period of maximum eleven months and that too by calling requisite tenders in this behalf. It is further submitted that the recruitment process has been resorted to by the MES Department based on the vacancies released by the Government and the process has taken its course of action as per the rules and regulations on the subject matter. The clause of over age is binding and has to be applied in recruitment. It is further pertinent to mention here that any person could have applied for the post, however since the petitioners herein were either over-age or were not qualified, their claims were rightly rejected. The applications of those candidates who have not met the above criteria have been rejected. The reason for rejection of candidature of the 22 applicants is enclosed as Annexure R-2 for the kind consideration of this Hon'ble Court. Once the contractor has been engaged as per standing operating procedure of management as explained in preliminary objections, it is the duty of the contractor to engage the labour for performing the work for which they have been engaged. It is a settled law of land that the persons appointed through contractors has no right of regularization in the Government and for the contractual employees, part time workers and other workers the Hon'ble Apex Court has held that their services cannot be regularized. Remaining paras are denied by the respondent-management for the want of knowledge. It is therefore prayed that written statement being submitted as explained hereinabove the present claim statement is not maintainable and the same is liable to be dismissed.

3. Workman filed replication to the written statement filed by the management, denying para 1 of the written statement has alleged that the petitioner-employees Union is duly registered Union and is fully competent to maintain the present lis and recognition of the respondent-management is not necessary for maintaining the present lis and also denied para 2 and 3 of the written statement. Remaining facts of the replication are same as alleged in the claim petition hence, need not to be repeated again.

4. Parties were given opportunity to lead evidence. In support of their case, workmen-union examined Sunder Singh, one of workmen who proved his affidavit Ex.WW1/A but none appeared on behalf of the management to cross-examine this witness, forcing this Tribunal to close opportunity of management to cross-examine the workmen-witness.

5. Management has not examined any witness in support of the facts alleged in written statement.

6. I have heard Sh. Subhash Ahuja, Ld. Counsel for the Union and Sh. Sanjay Goyal, Ld. Counsel for the management and perused the file carefully.

7. Learned counsel of the workmen submitted that they had joined the respondent-management on the date mentioned in the list attached with the reference and served in the capacity till their termination. It is also contended that the workmen were performing their duties directly under the management and the name of the workmen were allegedly transferred on the role of contractor to whom they were not aware till their termination. Learned counsel of workmen vehemently argued that services of the workmen were taken in utter violation of Contract Labour(Regulation and Abolition) Act, 1970 and in fact the workmen were the employees of the respondent-management for all purposes. Learned counsel further contended that the services of the workmen were terminated in utter violation of Section 25-F and 25-G of the ID Act without giving the notice and one month salary in lieu of notice. Learned counsel has placed reliance in the cases of ***Dharangadhara Chemicals Works Ltd. Vs. State of Saurashtra, AIR 1957, Supreme Court page 264, Ram Singh and others Vs. Union Territory Chandigarh and Oths., Civil Appeal No. 3166/2002, decided on 07.11.2003*** and in ***Steel Authority of India Ltd. Vs. Union of India and Oths.(2007) 1, Supreme Court cases, page 630,*** which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workmen with establishment and contractors.

8. Per contra, learned counsel of management vehemently argued that reference is not maintainable as it is not espoused by any union recognised by the management. Learned counsel further argued that nature of the

claim-petition is also defective because union as well as workmen have been impleaded as claimants. Learned counsel of the management also contended that there was no relationship of employer and employee/master and servant between the workmen and management as such, respondent-management has no liability towards the workmen. Learned counsel further argued that being the employees of the contractor if any liability occurs, it is between workmen/claimants and contractor under whom they served under the employment period. Learned counsel of the management has also submitted that workmen have utterly failed to submit documents in order to prove the relationship with management as such, petition is liable to be dismissed. Learned counsel has relied in the case of ***Secretary State of Karnataka Vs. Uma Devi(supra) and subsequent judgment of State of Karnataka Vs. M.K. Kesari & Oths (2010) 9 SCC 247***.

9. Before averting to the discussion in respect of the relationship of employer and employee, it is pertinent to mention that the respondent-management has not mentioned name of any contractors except stating that they were working on contract basis through contractor which was engaged by the respondent-management after complying the standard operating procedure(SOP) for a period of maximum 11 months that too by calling requisite tender in this behalf as averred in para 3 of the written statement. The copy of tender and other documents is attached as Annexure R-1 with the written statement but nothing is mentioned with respect to the name of the contractors who have been engaged by the respondent-management for the corresponding years. Documents attached as Annexure R-1 reveals that M/s Vasudev Trading Company were engaged by the management but the copies of the SOPs and alleged tenders have not been proved by any of the witness of the management. In fact it is a case where management has not examined any witness to prove the facts alleged in the written statement and forcing the Tribunal to proceed ex parte after closing the opportunity of the management. Thus, all the averments made in the written statement could not be proved through oral evidence. So far as documentary evidence filed as Annexure R-1 is not sufficient to prove the factum of engagement of contractor M/s Vasudev Trading Company in the absence of relevant pleading with respect to the clearly engagement of the above mentioned contractor and nature of the contract. The documents with respect to the payment by State Bank of Patiala is also of no use except the dates and cheques numbers and amounts debited or credited mentioned in the statement of bank account. It is settled principle of law that if the facts not specifically pleaded nor denied in pleading is deemed to be admitted facts and there is no question of its proof by oral or documentary evidence. No doubt management has denied the relationship of employer and employee with the workmen-union and management but mere averment in the written statement without mentioning the name of contractor, date of contract/agreement, the tenure of agreement, terms and conditions of the agreement, liability etc. Hence, it can be safely observed that the factum of employment of the workmen with the contractor could not be properly pleaded and proved by the respondent-management.

10. There is no dispute about preposition of law that onus to prove that workmen/claimants were in the employment of management is always on the workmen/claimants and it is for the workmen to adduce evidence to prove factum of their employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that they worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.*** There is hardly any dispute with the preposition of law as propounded in the aforesaid case. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management is orally stated in the claim petition as well as affidavit of the workmen-witness Sunder Singh. In para 3 of the affidavit of witness Sunder Singh, it is specifically stated that workmen rendered their services under the direct control and supervision by the office of the principal-employer the respondent-management at the rate of unskilled labour. In fact there is no documentary evidence with respect to the payment of wages/salary by the management to the workmen with respect to their salaries. But the affidavit filed by the witness of workmen Sunder Singh is unrebutted and uncontroverted because no one was present at the time of the cross-examination from the witness of workmen and opportunity of the management to cross-examine the workmen-witness has been closed by the Tribunal. Contrary to this, learned counsel of management argued that it was the contractor who paid their salaries. Learned counsel of the workman argued that the best evidence with respect to the engagement of contractor and payment was available with the management but in spite of the several applications and order, management knowingly did not produce any documents with respect to the attendance of the workmen as well as payments

etc. on false ground that the required documents were submitted to the counsel of the management Sh. Sanjay Goyal and for this, management has submitted the affidavit of witness Subir Saha as Ex.MW1/A but during the course of cross-examination by the workmen-counsel, this witness has stated that required documents have been submitted to the learned AR of workman S.M. Goel on 08.04.2016. The zimini order dated 25.04.2018 it is observed by my predecessor that there is no such record on the file and the workmen is at liberty to file the copies of records on the next date of hearing for the proper adjudication of the case on merit. Thus, it is evidently clear by virtue of the order dated 25.04.2018 that no documents have been submitted by the management with respect to the employment and payment of workmen by the management or contractors whatsoever, forcing the Tribunal to draw adverse inference in the light of the judgment of the Hon'ble Supreme Court in case of ***Food Corporation of India Vs. General Secretary, FCI India Employees Union & Ors., Civil Appeal No.10499 of 2011, decided on 20.08.2018.*** In my opinion, the very fact that the respondent failed to adduce any evidence to prove their case this Tribunal is constrained to draw adverse inference against it. Indeed nothing prevented to the management for adducing evidence to prove the real state of affairs prevailing in their set up relating to these workmen. It was not done by the respondent-management for the reason best known to them. The reference may be made to the judgment of ***M/s. Bharat Heavy Electrical Ltd. Vs. State of UP and Oths., Civil Appeal No.s 2459-2461 of 1999, decided on 21.07.2003,*** where similar observation is made by the Hon'ble Court.

11. Secondly, so far as the control and supervision is concerned, it is a specific case of the workmen that they had worked under the supervision and control of the management and it was the management who actually controlling the work of the management by assigning the name of workmen and duties through their junior engineers and assistant engineers. In this respect, learned counsel of the workmen has drawn my attention towards the documents filed by the workmen along with affidavit of witness Sunder Singh i.e. Ex.W-4 and W-5. Ex.W-4 is copies of complaint register pertaining to the maintenance and providing smooth supply of water and electricity during day out to all the residences and officer to all other offices of MES located in Subathu as is evident from the photocopies of the complaint register Ex.W-4 and logbooks Ex.W-5 for recording faults, supply of water and electricity and showing operators of water pumps as per duties/working hours, shifts allotted to them for all the 24 hours of the day. During the course of arguments, learned counsel of management honestly admitted that it was the junior engineers and assistant engineers who allotted the work to the workmen and were supplying tools and parts like tube light etc. through stock registers being maintained in the store. Undoubtedly, these documents pertaining to the year 2010 to 2012 which fortifies the version of the workmen that they are under the direct control and supervision of the management with respect to their services.

12. Learned counsel of the workmen has vehemently contended that the alleged contract/tender with M/s Vasudev Trading Company are shame and camouflage just to avoid the liability of the management arising under the Industrial Disputes Act, 1947. In this connection, learned counsel of workmen has placed reliance in the case of ***Steel Authority of India Ltd. Vs. National Union Water Front,*** relating to ***Appeal(Civil) 6009-6010 of 2010, decided on 30.08.2001,*** and contended that in the light of the observation of the Hon'ble Supreme Court, workmen should be treated as employee of the respondent-management. Going through the judgment of the Hon'ble Apex Court, it is crystal clear that when workmen are hired in or in connection with the work of management through contractor with or without the knowledge of the principal-employer, they are employees of establishment. According to the Supreme Court where the workman is hired by a contractor, he acts merely as an agent and there is relationship of master and servant between the management and workmen. Question might arise whether the contract is a mere camouflage as is held in case of ***Hussainbhai Calicuts vs. Alath Factory Thozhilali, AIR 1410, 1978 SCR (3) 1073 decided on 28.07.1978*** and in ***Indian Petrochemicals Corporation Ltd and Anr. vs. Shramik Sena and Ors. Appeal(Civil) 1854 of 1998, decided on 04.08.1999***, if the answer is in the affirmative, the workman will be in fact an employee of the principal employer but if the answer is in the negative, the workman will be a contract labour.

13. The Hon'ble Court has held in the case of ***Steel Authority of India Ltd. and Oths. Vs. National Union Waterfront Workers and Oths, 2001(4) SCT 1 (SC): 2001(7) SCC 1,*** that where the contract is found to be a sham and nominal rather a camouflage in which case the contract workers working in the establishment of the principal-employer were held the employees of the principal-employer himself. Indeed such cases do not relate to abolition of contract labour but present instances where the Court declared the correct position as a fact at the stage after employment of contract labour stood provided. So far as the present case is concerned, in fact there is not an iota of evidence with respect to the lawful agreement entered into between the workmen and management. So far as the tender of contract is concerned, that too is not proved by any cogent evidence, even the name of the contractor is not mentioned in the written statement or any other documents which are on record. The Hon'ble Supreme Court has held in case of ***Steel Authority of India Ltd. Vs. National Union Water Front(supra)*** in Para 107 that:-

"where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited….."

Thus, on the basis of principle of preponderance of probability and the evidence on record, I am of the considered opinion that alleged tendering system was shame and camouflage and workmen were rendering their services under the direct control and supervision of the management and were paid accordingly.

14. The next contention of the learned counsel of respondent-management is with respect to the maintainability of the reference being not espoused by the registered union. Learned counsel of the workmen while placing reliance in the case of ***Newspaper Ltd. Vs. U.P. State Industrial Tribunal and Oths. Civil Appeal No. 348/1959, decided on 04.05.1960,*** it is not necessary that case of workmen has to be sponsored only by a registered union and cause of the workmen can be taken up by any unregistered association of workmen. The Photostat copy of the registered union is Ex.W-1 and resolution of the workmen Ex.W-2 is the ample proof that claim of the workmen are agitated and contested by the MES Contract Workers Union, Tehsil & Distt. Solan(H.P.) from the beginning hence argument advanced by the learned counsel of the management to this respect has no force at all.

15. The question which arises for consideration is whether workmen are entitled for any relief in the light of the reference? Learned counsel of the management argued in the light of the observation made by the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka Vs. Uma Devi, 2006 (2) SCT 462 (2006) 4 SCC1,*** that workmen are neither entitled for reinstatement nor for regularization as they were the employees of the contractor and not posted against substantive vacancy in the department. Contrary to this, learned counsel of the workmen argued that management was adopting unfair labour practice and not giving equal pay for equal work to the workmen. Learned counsel further argued that it is a specific case of the workmen in the claim petition as well as affidavit filed by witness Sunder Singh that work being done by the concerned workmen was of perennial nature and they were working not for similar number of hours but more than 8 hours as that of the permanent employees of the management. Learned counsel further argued that discrepancies in the wages between the workmen was unfair labour practice and violative of principle of equal pay for equal work. In this connection, learned counsel has placed reliance of the case of ***Umrala Gram Panchayat vs. The Secretary, Municipal Employees' Union & Ors., arising out of Civil Appeal Nos. 3209-3210 of 2015, decided on 27.03.2015,*** and judgment of Hon'ble Punjab & Haryana High Court in the case of ***Davender Vs. The Presiding Officer, CWP No.7244 of 2013, decided on 12.02.2015*** and full bench decision of ***Municipal council, Dina Nagar Vs. Presiding Officer, Labour Court, LPA No.754 of 2010, decided on 10.10.2014.*** The Hon'ble Supreme Court in the case of ***Maharashtra State Road Transport Corporation Ltd. Vs. Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 8 SCC 556,*** dealing with the power and jurisdiction of the Industrial Tribunal and explaining the constitution bench decision of ***Uma Devi case*** has held in para 32,35 and 36 as follows:-

"32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under ited 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

35. Umadevi (3) 1 is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3)1 does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

The Hon'ble Court in the case of ***Casteribe*** has rejected the argument raised by the corporation by observing that Industrial/Labour Court under the Act has got specific power to take affirmative action against the erring employers and orders can well be made to accord permanency to the employers affected by such unfair labour practice. However, the victims of unfair labour practice of the employer deserve freedom of permanency where facts and circumstanced demand in the canvas of ***Casteribe.***

16. Though ***Casteribe*** is a case arising out of industrial adjudication on a complaint made by the Union of workers that the affected employees were engaged by the Corporation as casual labourers for cleaning the buses between 198-1985 but the contested issue before the labour tribunal was whether the workers could be granted the status of permanency on par with other permanent cleaners. The Industrial Court, Bombay held that the complaint regarding unfair labour practice against the Corporation under Item 6 of Schedule IV was not maintainable. However, the complaints were maintainable in respect of the unfair labour practice under items 5, 9 and 10. A finding was returned that unfair labour practice has been committed under items 5 and 9 of schedule IV, Section 30 of the Maharashtra State Act empowers the Industrial and the Labour Courts to decide on any person named in the complaint if he has engaged in or is engaging in any unfair labour practice. It may in its order give declarations and directions accordingly. Items 5, 6 and 9 of Schedule IV to the MRTU & PULP Acts need to be seen. They read:-

"5. To show favouritism or partiality to one set of workers, regardless of merits.

1. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement."

17. Item 6 of Schedule IV is identical to Entry 10 of the 5th Schedule to the Central Act and, therefore, would suffer common interpretation. The expression "unfair labour practice" in Section 2(ra) of the Industrial Disputes Act, 1947 is defined to mean any of the practices specified in the 5th Schedule. It may be noted that the Industrial Disputes Act, 1947 does not contain a provision like Section 30 of the MRTU & PULP Act in Maharashtra. Unfair labour practice in the Central Act are placed in Chapter VC. Section 25T and 25U deal with prohibition and penalty for committing unfair labour practice. Thus, there is a complete statutory prohibition against an employer, workmen or trade union against committing an unfair labour practice. Though the consequences of violating the provisions of Section 25T of the Industrial Disputes Act is punishment with imprisonment but that does not mean that the Labour Court is barred to exercise its powers of making declarations and issuing directions where a prima facie case is made out of violation of the law. In fact, Entry 10 of the 5th schedule is a rule against exploitation. It is a rule against modern day slavery and against unfair domination. Unfair labour practice is akin to unfair discrimination. They both belong to the same family. Entry 10 of the Central Act and Entry 6 of the Maharashtra Act pre-supposes that a body of workers under the same employer and doing the same thing are permanent while others not. Unfair labour practice would thus fall in the same cluster of grounds of challenge of administrative action as those when the Writ Court deals with in cases of malafides, malice in law, malice in fact, bias, colourable exercise or power or abuse of authority and so on and so forth. Merely because the Central Act does not contain specific provisions such as those in MRTU & PULP Act and of Section 30 thereof, it would not denude this Tribunal to remove unfair discrimination whenever found in the light of discussion of ***Casteribe*** case.

18. Looking the nature of dispute between the parties, the observation made by the Hon'ble Supreme Court in the case of ***Harjinder Singh Vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192,*** becomes relevant in which it has held in Para 30 and 31 of the judgment as follows:-

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private."

19. It is pertinent to mention that similar issue relating to unfair trade practice by the employer and decision of ***Umrala Gram Panchayat(supra),*** case held as follows:-

"19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Uma devi (3) in the grant of relief was considered by this Court in Ajaypal Singh Vs. Haryana Warehousing Corporation in Civil Apppeal No.6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows:

20. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.

21. We have noticed that Industrial Disputes Act is made for settlement of Industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees...."

20. The Industrial Disputes Act and other similar relative instruments are social welfare legislation and the same are required to be interpreted keeping in view the goal set out in the frame of the Constitution. The liability on the subject is biased by the Supreme Court in favour of the workmen placed in the circumstances such as the claimants in several binding precedents including in ***Harjinder Singh Vs. Punjab State Warehousing Corporation, 2010(1) S.C.T. 725: (2010) 3 SCC 192, Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), 2010(3) S.C.T. 319: 2010(3) SLR 663 and Devinder Singh Vs. Municipal Council, Sanaur, 2011(3) S.C.T. 139: (2011) 6 SCC 584*** and as are further explained in ***Assistant Engineer, Rajasthan Development Corporation Vs. Gitam Singh, 2013(2) S.C.T. 30: (2013) 5 SCC 136*** that there should not be a mechanical or automatic reinstatement. The evidence which is on record should establish that workmen are rendering for so many years with the respondent-management and works are of perennial nature having completed more than 240 days as required under Section 25-F of the Industrial Disputes Act, 1947 which stipulates one month notice or compensation in lieu of notice. Admittedly, neither notices are issued nor compensations are given to the workmen before their alleged termination by the respondent-management on the pretext that they were the employees of the contractor. The Hon'ble Supreme Court in the case of ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held that if the order of termination is void ab initio for non-compliance of Section 25-F(Clause A and Clause B) or Section 25-G and 25-H of the Act, the workman is entitled to full back wages. The relevant para of the judgment is as under:

"The propositions which can be culled out from the aforementioned judgments are:

"i) In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

21. The Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Vs. Krishan Gopal & Ors., Civil Appeal No.1878 of 2016*** with the other bundle of ***Civil Appeals decided on 07.02.2020,*** has observed

in Para (ii) and (v), considering the series of judgments of the Hon'ble Apex Court including ***Uma Devi case*** as follows:-

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filing up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(v) In order to constitute an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years with the object of depriving them of the benefits payable to permanent workmen.

22. Undoubtedly, it is an admitted fact between the parties that vacancies are filled up by examination as per rules of recruitment rejecting the selection of workmen on the ground of overage or absence of required academic qualification. It is equally proved that workmen were rendering their services for so many years without any complaint or fault as such, they are competent enough to be given permanency for the job of perennial nature. This Tribunal is of the considered opinion that this is not the case where the reinstatement should be denied. Where reinstatement could be automatically in numerous cases of Hon'ble Supreme Court in this line of thinking two sort of relief can be granted; one is reinstatement with full back wages and reinstatement without back wages for which there should be good reason where there is a negative factor working as workmen in the net-product of the proceeding. The evidence on record is ample proof that management were indulge in unfair labour practice by not filling up permanent post even though such posts are available on relevant time by continuing to employ workmen as temporary employee despite they are performing the same work as regular workmen at lower wages. As per the averments made in the claim petition, all the workmen are still without any job and are not gainfully employed anywhere but this fact is not proved by the affidavit of the workmen-witness Sunder Singh on Oath or any other evidence as such, it could not be presumed that workmen are still without any job and not gainfully employed anywhere.

23. In view of the reasons stated above, and in the light of the facts and circumstances of the present case laws, this Tribunal is of the considered opinion that the services of the concerned-workmen are illegally terminated and termination of the workmen by the management against the vacant post is illegal, unjust and invalid. Hence, this Tribunal holds that the services of the workmen are permanent nature since they have worked for more than 240 days in a calendar year from year to year which is clear from the evidence on record. Consequently, the termination of the workmen is set aside and workmen mentioned in the list are awarded the reinstatement with permanency of service and half wages payable from the date of termination till reinstatement. Respondent/management is directed to comply the award within 3 months from the notification of award.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 533.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षक डाकघर चंबा (हिमाचल प्रदेश) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 104/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.06.2020 को प्राप्त हुए थे ।

[सं. एल-40012/93/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 533.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 104/2014) of the Central Government Industrial-Tribunal – cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintendent of Post Office, Chamba (Himachal Pradesh) & Others, and their workmen which were received by the Central Government on 23.06.2020.

[No. L-40012/93/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.104/2014

Registered On:-02.03.2015

Rakesh Kumar son of Lahuri Ram resident of Village Grohn, Post Office Diur, Tehsil Salooni, District Chamba (H.P) ... Applicant/workman

Versus

1. Union of India through its Secretary, Ministry of Information Technology, Department of Post Office, Dak Bhawan, Sansad Marg, New Delhi.
2. The Director, Postal Services, Himachal Pradesh (Shimla).
3. Superintendent of Post Office, Chamba(Himachal Pradesh).
4. Post Master, Chamba (Himachal Pradesh).
5. Post Master, Diur (Himachal Pradesh). ...Respondents/managements

AWARD

Passed on:-04.06.2020

Central Government vide Notification No. L-40012/93/2014-IR(DU) Dated 29.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Post Office in terminating the services of Sh. Rakesh Kumar w.e.f. 28.02.2013 is just, valid and legal? If not, to what benefits the workman is entitled for and what directions are necessary in the matter?"**

1. Both the parties were put to notice and workman filed its statement of claim, alleging therein that he was appointed by respondents/managements vide office orders Memo No.H33/Pichhla Diur/26.11.2001 and in compliance of the order joined duties on 28.11.2001 at Post Office Diur. He performed his duties sincerely, honestly and diligently to the satisfaction of the management. The services of the workman were terminated on 28.02.2013 without show cause notice, charge sheet and inquiry. No retrenchment benefits or compensation has been given to the workman. After the termination of the services of the workman, Rakesh Kumar, management appointed their own favorites in place of workman Rakesh Kumar who has completed 12 years of service in spite of the availability of the work with the Management. The workman approached many times for his reinstatement by the management but no action is taken upon workman's request for reinstatement and he is unemployed from the date when the management has dispensed with his duties.

2. Respondents/managements Union of India has filed its written statement alleging therein that this Court has got no jurisdiction to try and entertain the present statement of claim. Workman is not a Central Government Employee, nor is affected by the order of the respondent/management. The scheme of Panchayat Sanchar Sewa Yojna was launched by the Department of posts from September 30, 1995 to provide basic facilities to the Gram Panchayat Head Quarters which were without Post Offices. Copy of the same is appended as Annexure R-1. The scheme was to be implemented by the Gram Panchayat through an agent sponsored by it, for the sale of stamps and postal stationery, booking of registered articles and delivery of mails where feasible through network of Panchayat Sanchar Sewa Kendra. Claimant was appointed vide proposal dated 24.08.2002 on the basis of Gram Panchayat Pichla Diur, copy of which is attached as Annexure R-2 on fixed amount of Rs.600/- on monthly basis through Pradhan Gram Panchayat Pichla Diur on sale of postage stamps and stationery above of Rs.600/- as per instructions Annexure R-3 of the department. The PSSK Agent Pichla Diur did not sell any postage stamps and stationery after January 2011, onwards as such show cause notice was served on him vide letter No.H-1/33/Pichla Diur dated 24.01.2012 to earn presceibed revenue otherwise Sanchar Kendra will be closed. But the PSSK as well as Pradhan Gram Panchayat Pichla Diur did not respond to the notice and claimant/applicant remained absent from duty w.e.f February 2011 onwards resulting the closure of PSSK Pichla Diur vide this office Memo No.A-1/PSSK/Corr dated 05.03.2012. The claimant was neither given any appointment letter nor given any appointment nor payment was made to the applicant by the Department. Applicant is not a workman under the respondents. The Gram Panchayat had full powers to terminate the agent after due consultation with the respondents as such the case does not fall within the purview

of the Industrial Disputes Act. In fact claimant was appointed as per agreement between the Gram Panchayat and the Department of postage and there was no direct agreement or appointment letter between the answering respondents and the workman applicant. In view of the above submission, it is prayed that workman is not entitled to the relief and the instant reference is liable to be answered in favour of the respondents/ managements.

3. Claimant/workman has filed its rejoinder/replication, alleging therein that this Tribunal has got Jurisdiction to entertain and try the present dispute, because the workman was selected and appointed by the Senior Superintendent of the Post Office, Chamba Division, Chamba, Himachal Pradesh. The Posts and Telegraphs, Telephones, Wireless Broadcasting and other like forms of communications are included in Union list as such workman is Central Government Employee for all intents and purposes protected under Article 309 of the Constitution of India. It is pertinent to mention that as per information obtained through RTI there are PSSK working in the Chamba Division who are similarly situated to the workman and only the workman has been discriminated at the instance of BHP Divr. It is further alleged that respondents have condemned the applicant/workman without observing the principles of natural justice and even without giving applicant any opportunity of personal hearing, as per settled law. There was no fall of revenue earning on the part of applicant rather applicant had been earning more revenue to the department as compared to other 08 PSSK working in the Division. The workman is entitled to reinstatement with full back wages with continuity in service and regularization and promotion. Remaining facts alleged in the replication is the same which are alleged in the claim statement as such need not be reiterated.

4. In support of his case, the workman Rakesh Kumar has examined witness Jai Singh, Sarpanch and tendered his affidavit in evidence which is marked as Ex.P1 and has been cross-examined by the learned counsel of management.

5. Management has examined Sunny Bhardwaj, Inspector Posts, Chamba, who has filed his affidavit in evidence as Ex.MW1/A along with documents Ex.M1 to M4 and has been cross-examined by the workman counsel.

6. I have heard the arguments of learned counsel for the workman Sh. Harvinder Singh and learned counsel for the management Sh. V.K. Arya and perused the written arguments filed by the workman as well as documents available on record.

7. Learned counsel of the workman contended that office of the postal department is an industrial establishment and workman Rakesh Kumar is definitely a workman under the ID Act, 1947 as such, he is entitled for protection under Section 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947. It is further argued that workman is entitled to the benefit of leave encashment, gratuity for the years along with pension inasmuch as respondent/management has been brought under the provision of EPF & MP Act, 1952. Learned counsel further argued that Section 52 of the Indian Post Office Act, 1898 stipulates that officers of the post office, includes any person employed in any business of the post office or on behalf of the post office read with Section 2 of the said Act. Since the workman was employed by the respondent, he is definitely an employee of respondent for intents and purposes and by virtue of Section 4 of the Act, conveying of the letter is an exclusive privilege and is only reserved for the Government and not for the Gram Panchyat. He further argued that any sort of arrangement or contract entered into between the Panchayat and respondent is totally invalid and illegal in the light of Section 52 and 74 of the Indian Post Offices Act, 1898 and thus the Scheme of 1995 is highly illegal and unconstitutional. It is further argued that workman had worked continuously for 12 years as civil servant with the management and thrown out by the respondents without any cogent reason compensation and has become jobless since his alleged termination. Learned counsel has placed reliance of the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***General Manager, Telecom Vs. S. Srinivasa Rao & Ors.decided on 18.11.1997*** and in case of ***State of Gujarat and another Vs. Ram Lal Keshava Lal Soni and others, AIR 1984, Supreme Court, page 161.***

8. Learned counsel of the managements contended in the light of the facts alleged in the written statement and argued that claimant was employed as PSSK agent, Pichla Diur as per the proposal of Gram Panchayat, Pichla Diur w.e.f. 28.11.2002 onwards on fixed amount of Rs.600/- on monthly basis for sale of postage stamps and stationery above Rs.600/- as per instructions of the department. The employment of the workman was subject to the Scheme of Panchayat Sanchar Yojana launched by the department to provide basic facilities to the Gram Panchayat, Headquarters. Learned counsel further argued that the proposal of PSSK was reviewed as per DGPO letter dated 13.01.2012 and it was found that claimant Rakesh Kumar as PSSK Agent did not sell any postage stamps and stationery after January, 2011 onwards, resulting a show cause notice dated 24.01.2012. Due to non-response of the claimant as well as Pardhan, Gram Panchayat, PSSK Pichla Diur was closed vide office memo dated 05.03.2012. Learned counsel further argued that neither any appointment letter

was issued to the claimant by the department nor any direct payment is made to the claimant by the department as such, there did not exist any relationship of employer and employee/master and servant between the respondent/management and claimant as such, the workman does not come within the definition of workman and respondent-management is not an industry within the meaning of Industrial Disputes Act. It is further argued that the Gram Panchayat had full power to terminate the agent after due consultation with the respondents as envisaged in the Scheme as such, this reference is out of purview of the Industrial Disputes Act, 1947. According to the learned counsel of the respondent/management, the agreement was between the Gram Panchayat and the department of post and there was no direct agreement or appointment of the claimant by the answering respondent and as such, the provision of Section 25 of the ID Act has no relevance at all.

9. Before averting to the legal controversy between the parties, it will be relevant to mention those facts which are admitted by both the parties either in their pleadings or during the course of arguments. it is not disputed that claimant/applicant was appointed in respect of the Scheme launched by the department of post as Panchayat Sanchar Sewa Yojana and he was appointed as PSSK Pichla Diur in pursuance of the proposal made by Gram Panchayat, Salooni vide its proposal dated 24.08.2002 Ex.R-2. This fact is admitted by the witness of the workman Jai Singh, Sarpanch during his cross-examination who has verified his signature on Ex.R-2 which is a photocopy of the resolution passed by the Gram Panchayat for recommending the name of the workman. It is also admitted between the parties that workman had assigned booking of register, sale of stamps, sale of postage stamps, stationery, delivery of stamps and sale of postal life insurance. i.e. is the business of the post office. There is no dispute that claimant rendered his services from 28.11.2002 to 05.03.2012 when his services came to an end by virtue of closing the Sanchar Kendra Yojana in absence of workman and non-compliance of the object of the scheme.

10. The first question which arises for consideration is whether the claimant/applicant Rakesh Kumar comes within the definition of workman as defined under Section 2(S) of the ID Act? In this regard, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947. So, claimant/workman definitely falls within the definition of workman.

11. There is no dispute about preposition of law that onus to prove that workman/claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.*** There is hardly any dispute with the preposition of law as propounded in the aforesaid case. So far as question of relationship is concerned, Hon'ble Supreme Court in case of ***State of Gujarat and another v. Raman Lal Keshav Lal Soni and others, Civil Appeal No.359 of 1978,*** has held in Para 27 as follow:-

> ***"It is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are***

paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the state or not."

The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

12. The fact regarding the amount of salary and payment of salary is not specifically mentioned in the claim petition by the workman. Similarly, claimant/applicant Rakesh Kumar has not specifically stated anything with respect to the amount of salary and payment of salary by the respondent/management in his affidavit submitted as Ex.P1. Learned counsel of the workman contended that it was the respondents who appointed the workman and salary was paid by the respondents as per terms and conditions. In this connection, learned counsel has drawn my attention towards the office order memo dated 26.11.2001 in compliance of which workman has joined his duties on 28.11.2002 at Post Office Dhur. It is pertinent to mention that claimant has neither submitted the above documents with the claim petition nor with the affidavit as such, it is not duly proved but there is a charged-report dated 28.11.2002 on the record which reveals that claimant reported his joining on 28.11.2002 before the postal-authority and he was directed to report to BPM Division for discharging his duties with information to Pardhan, Gram Panchayat Deur. But in fact this is a charge report and duly attested by the Superintendent of Post Office, Chamba Division, Chamba as well as it is not denied by the respondent. Thus, there is no doubt that claimant has submitted his joining report on 28.11.2002 who was directed to inform the Pardhan Gram Panchayat, Pichla Deur by postal-authority, there is no evidence at all with respect to the advertisement, examination, selection, interview and issuing any letter of appointment as such, the argument of learned counsel of the workman with respect to workman being a civil servant cannot be accepted in the light of the observation made by the Hon'ble Supreme Court in the case of ***Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors., arising out of Civil Appeal No.933 of 2006, decided on 02.02.2006.*** Thus, the evidence with respect to the payment of salary and amount of salary is not duly proved by the workman though it requires to be proved by the preponderance of probability. Contrary to this, learned counsel of the respondent argued that workman appointed through Pardhan Gram Panchayat Pichla Deur at the fixed amount of Rs.600/- in pursuance of the Panchayat Sanchar Sewa Yojana Scheme launched by the Postal Department in the year 1995 and was duly paid by the Pardhan Gram Panchayat Pichla Deur. Going though the Panchayat Sanchar Sewa Yojana Scheme, it is crystal clear that location, timings and items for running the office and purchase of stamps from the account of post office has to be incurred by the Gram Panchayat itself as such, in the absence of any cogent evidence on behalf of the workman, it cannot be assumed that it was the Postal Department who used to pay the salary to the workman directly during his tenure of his service.

13. Secondly, so far as the control and supervision is concerned, it is a specific case of the workman that he has worked under the supervision and direct control of the respondent and it was the respondent who actually controlled the work of the claimant through Superintendent of the Post Office. In this connection, learned counsel of the claimant/workman has drawn my attention towards the statement of the management witness Sunny Bhardwaj, who has specifically accepted that post office Salloni used to supply the necessary postal stationery, stamps and revenue stamps etc. for carrying out the dak and the money used to be deposited within the post offices. According to this witness, file HNo.H-1-33/Pichla Diur is the office filed maintained by the Superintendent of Post Office, Chamba Division. Learned counsel of the claimant/workman contended that the nature of work and nature of the assignment of the claimant itself is a proof that it could not be performed without the aid and control of the Postal Department as such.

14. Contrary to this, learned counsel of the respondent/management has drawn my attention towards the Scheme of Panchayat Sanchar Sewa Yojana, where it is specifically mentioned that there was a provision of agreement with the Gram Panchayat and the so called Sanchar Kendra has to function till the termination of the contract and the Superintendent/Senior Superintendent shall be the competent to terminate the services of the PSSK agent by giving one month notice. Further, learned counsel argued that as per provision of the Scheme, it is the head of the Panchayat who has right to grant the leave to the PSSK Pichal Deur as per the Rule 6 of the Scheme and as per Rule 9(2) of the Scheme of system it was the Gram Panchayat which runs the business and responsibility for payment of allowances which also rests with the Gram Panchayat. In the light of the above provision, learned counsel of the respondent argued that actual control lies with the Gram Panchayat of the Deur and termination of the contract lies with the Superintendent in breach of the terms and conditions mentioned in

Rule 4 of the Scheme. Learned counsel of the management further argued that due to insufficiency and non-availability of the workman/claimant for rendering his services from Feb. 2011 to 28.02.2013 and non-reply of the claimant as well as Gram Panchayat Pardhan with respect to the notice issued forced the Superintendent to terminate the contract and close the Sanchar Sewa Kendra in the village.

15. It is pertinent to mention that the judgment of the Constitution Bench of 7 Judges ***General Manager, Telecom Vs. S. Srinivasa Rao & Ors. Decided on 18.11.1997,*** in which almost a similar type of dispute has been dealt with. The Hon'ble Supreme Court while explaining the relationship of the employer and employee has held in Para 5 that problem of defining nature of employer and the employee relationship depends on facts of each case. As per Hon'nle Supreme Court, there is difference between the contract of service and contract for service. In a contract for service, the master has to require what is to be done while in the contract of service he could not only order but also require what is to be done how it has to be done. In such cases, there will be difference in masters power of selection, control, method of working, suspension, responsibilities of payment of wages. The fact of the Superintendent and control always treated as reasonable quality of relationship. In the light of the observation of the Hon'ble Supreme Court, it is crystal clear that claimant/workman was appointed by virtue of the proposal of the Gram Panchayat Pichla Diur as PSSK Pichla Deur salary and allowances has been paid by the Pardhan of Gram Panchayat and he has the authority to grant the leave etc. as such, it cannot be said that by conducting and coordinating for the work assigned in the scheme was sufficient to make the Postal Department as employer of the workman as is argued by the learned counsel of workman.

16. Learned counsel of the workman in the light of the written argument contended that the Scheme Panchayat Sanchar Sewa Yojna introduced and implemented by the respondent encroaches upon the valuable rights of the workman and action of the respondent is illegal and unconstitutional and the unconstitutionality can be traced under Section 74 of Indian Post Office Act, 1898 where powers delegated under Section 75 of the Indian Post Office Act are highly excessive, illegal and they encroach upon duties of Parliament as such, scheme of 1995 is illegal and unconstitutional. Learned counsel of the respondent argued that the submission made by the workman-counsel with respect to the illegality of the scheme in the light of Section 74 and 75 of the Indian Post Office is misconceived in the light of the judgment of Hon'ble Supreme Court ***N. Ajit Kumar Nag Vs. G.M.(P.J.) Indian Oil Corporation Ltd. and Oths., Civil Appeal No.4544 of 2005 dated 19.09.2005***, wherein it is held that the provision which is otherwise legal, valid and intra vires cannot be declared unconstitutional or ultra vires merely on the ground that there is possibility of abuse or misuse of such power. Learned counsel of the workman could not draw my attention towards the misuse of power by the respondent while running the Scheme of 1995 Gram Panchayat Pichla Diur as PSSK Pichla Deur for a long time till its closer. Even if for the sake of argument, it is assumed that the argument advanced by the learned counsel of the workman has some force then his claim as an employee of the respondent also losses its importance because his appointment is undoubtedly made after the resolution of the Gram Panchayat.

17. In the last limb of the argument, learned counsel of the workman while placing reliance of the case of ***General Manager Telecom Vs. S. Srinivas & Oths. Dated 18.11.1997,*** argued that respondent is an "Industry" and claimant is a "workman" in the light of Section 2(S) of the Industrial Disputes Act as such, respondents are duty bound to comply the Section of 25 of the Industrial Disputes Act for serving one month notice in lieu of retrenchment compensation. Learned counsel of the workman placing reliance in the case of ***Superintendent of Post Offices, Divisional Office, Muffasil Division, Ludhiana Vs. Central Govt. Industrial Tribunal-cum-Labour Court-I and Anr., LPA No.467 of 2013(O&M), dated 12.04.2013,*** argued that respondent-management has failed to show that the workman was absent from Jan. 2011 onwards till closer of PSSK Pichla Deur in the month of Jan. 2012. There is no dispute that the scheme is closed by the respondent in the month of Jan. 2012 as is alleged in the written statement of the respondents/managements itself. The facts for closer of the scheme has revealed in the written statement that workman as well as Gram Pardhan Panchayat, Pichla Deur did not take interest in running the scheme and accordingly the notice was sent and after receiving, no response from the workman as well as Pardhan, Gram Panchayat, Pichla Deur, management was forced to close the scheme. No doubt management had submitted the copy of the notice sent to the concerned parties but there is nothing on record to prove that notice was duly sent to the workman as well as Pardhan Gram Panchayat, Pichla Deur and it was served accordingly. In this background, it can be said that sending notice in compliance of Section 25-F could not be proved by the management. However, learned counsel of the management argued that for taking the benefit of Section 25-F of the Industrial Disputes Act, the workman has to prove that he had worked for 240 days for preceding year from the date of closer of the scheme or alleged termination by the respondent. In this connection, learned counsel of respondent has drawn my attention towards the documents filed by the workman

along with his written argument pertaining to information received under RTI Act 2005 which reveals that workman has not sold any postage-stamp from January 2011 to January 2012. There is also a reply with respect to question no.2 that no registered article was booked by the PSSK Pichla Deur after 01.01.2011. This fact is also proved by the documents pertaining to the department of Post India maintained as per Rule 402 of Post and Telegraph and Manual 6 which runs from the year 2009 to 27.02.2012. There is no entry with respect to the sale of postage after 30.12.2010 to 04.02.2012 and the last entry is of 04.02.2012 amounting Rs.400/- and 27.02.2012 amounting Rs.500/- only. It clearly proves that nothing has been sold after January 2010 to January 2012 signifying that workman has made himself absent during the relevant period as is alleged by the respondent in its written statement as well as in the statement of witness Sunny Bhardwaj. There is nothing stated in the claim petition as well as statement of the workman that there was no way to make attendance or something else while running the scheme itself. Thus, the documents filed by the workman as well as management clearly proved that workman has not performed his duty from January 2011 to January 2012. Section 25-F of the Industrial Disputes Act is very clear that workman has to render his services 240 days in preceding year before his alleged termination in order to get the benefit of the Section itself. Learned counsel of the workman contended that there was no provision for any attendance hence, question of producing evidence regarding the attendance is not possible. This Tribunal is of the considered opinion that workman could prove it by producing any documents relating to payment of Rs.500/- per month payable by Pardhan Gram Panchayat, Pichla Deur in lieu of the services rendered under the Scheme during the relevant time. Hence, the argument advanced by the learned counsel of the workman with respect to the compliance of Section 25-F of the Industrial Disputes Act has no force and workman is not legally entitled for any benefit for the breach of the provision of Section 25-F of the Act, if any.

18. Having gone through the above factual and legal proposition and argument advanced by the learned counsels for both the parties, this Tribunal is of the considered opinion that the alleged termination of the workman is just, valid and legal and the workman/claimant is not entitled for any relief from this Tribunal and the reference is answered accordingly against the workman/claimant.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 534.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिया एंटरप्राइजेज, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 45/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/03/2020 को प्राप्त हुए थे।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 534.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2016) of the Central Government Industrial-Tribunal-cum Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Riya Enterprises, Chandigarh & Others, and their workmen which were received by the Central Government on 11.03.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 45/2016

Registered on:-20.03.2017

Ajay Kumar Tiwari S/o Rampat Tiwari, By-pass Road Adani CNG Pump, Sector 9, Faridabad, Haryana. ...Workman

Versus

1. M/s. Riya Enterprises, 26/B, A-3, Rushabh Flat, Brahman Mitra Mandal Society, Nr. Railway Crossing, Lalaram Mandir, Ellisbridge, Ahmedabad through its Partner/Proprietor.

2. M/s. Adani Gas Limited, 26/A-3, Rushabh Flat, Brahman Mitra Mandal Society, Nr. Railway Crossing, Lalaram Mandir, Ellisbridge, Ahmedabad through its Partner/Proprietor. ...Respondents/Managements

AWARD

Passed on:-02.03.2020

1. The workman has directly filed this claim petition under Section 2-A of the Industrial Disputes Act, 1947, in pursuance of the certificate issued by the Assistant Labour Commissioner, Central, Karnal, dated 28.12.2016, with the averment that he was appointed by respondent no.1 in the year 2010 and performing the duties which were totally highly skilled and operational in nature as such, he is a workman as defined in Section 2(S) of the Industrial Disputes Act, 1947. The respondent-management is an Industry as defined in Section 2(i) of the Industrial Disputes Act, 1947. There was no complaint against the applicant/workman regarding his work and conduct and he was performing his duties most diligently and honestly to the satisfaction of his superiors. On 04.05.2016, the applicant/workman was on duty and he suffered stomach pain. He informed Bhauraj Ram Chauhan immediate officer regarding pain and on their instruction, the workman was admitted in Hospital at Sector 9, Faridabad, where the doctor disclosed that the applicant is suffering from appendix and advised to immediate operation. On 08.05.2016, the applicant/workman discharged from hospital and get started his treatment from Sunita Healthcare (Dr. R.D. Singh) and remained continue for medical treatment for about one month and on 22.06.2016 an operation was conducted. The applicant/workman requested the officials for releasing his salary for which he received the salary for the month of May 2016 but respondent/management did not release the medical expenses. On 12.08.2016, the applicant/workman went to join his duties but the owner of said gas-agency linger on the matter to join the duties and he was terminated from his service on 04.09.2016. The applicant/workman is suffering very hardship to maintain his family and schooling of his children and now the condition is going to starvation. The management has violated the Section 25-F of the Industrial Disputes Act. It is therefore, prayed that balance salary and other allowances along with 18% interest, medical expenses and compensation of Rs.1,00,000/ be awarded to the applicant/workman.

2. Respondent/management has not filed any written statement and was proceeded ex parte on 24.09.2019.

3. The claimant/workman tendered his affidavit Ex.MW1/A along with three documents as documentary evidence.

4. Heard the ex parte argument of the learned counsel of the workman and perused the records.

5. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Sureme Court Cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikhubhai Meghajibhai Gavda(2012) 1 SCC 47.***

6. There is hardly any dispute with the proposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is quite different inasmuch as the management has not contested the case on merit. The workman Ajay Tiwari has filed his affidavit as Ex.WW1/A along with photocopy of ID card, photocopy of the attendance sheet and payment of salary issued by the respondent-management. The facts

alleged in the claim petition is supported with the affidavit of the workman, which is uncontroverted and unrebutted because of the absence of the management during the course of proceedings. Workman has filed photocopy of the ID card, attendance sheet of May 2016 and salary sheet which fortifies the facts alleged in the claim petition that he was an employee of the respondent-management. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

7. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer-management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act. It is a specific case of the workman that he was appointed as workman in the year 2010 for handling the CNG gas including filling up the CNG gas and safety technical and operational competency and a pass was issued by the management copy of which is filed as Annexure W-1. The claimant has alleged in his affidavit that due to medical treatment and operation of the appendix he could not attend the duty from 04.05.2016 and he reported for duty on 12.08.2016. He was not allowed for duties and management terminated him from service on 04.09.2016 without the release of medical expenses and salary. Thus, the evidence on record is a sufficient proof that he had completed more than 240 days of service in each calendar year but despite that no notice or compensation in lieu of notice was given to him prior to the termination by the management.

8. The oral and documentary evidence and case laws as discussed above, the contention of the workman is proved on the basis of the preponderance of probability as is envisaged for the disposal of the cases under the Industrial Disputes Act, 1947. To my mind, workman is successful to prove that he was an employee of the respondent-management who has been terminated from service in utter violation of Section 25-F of the Industrial Disputes Act, 1947.

9. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law.

10. Since there is no evidence on record that any valid notice was issued by the management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him as such, action of the management in terminating the services of the workman is held to be illegal and void.

11. The Hon'ble Apex Court in case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** reported as (2013) 10 SCC 324 has held as under:-

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> ***i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back***

wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

12. Yet in another latest case of ***Hari Nandan Prasad vs. Food Corporation of India (2014) 7 Supreme Court cases 190*** as under:-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation."

13. In the recent decision reported as **2018 LLR 225 titled as District Development Officer & another vs. Satish Katilal Amrelia,** Hon'ble Apex Court while aptly applying the law laid down in earlier case of ***Bharat Sanchar Nigam Limited Vs. Bhurumal (2014) 7 SCC 177,*** had awarded lumpsum compensation of Rs.2.5 lakhs to the workman and in Bharat Sanchar Nigam Limited (supra), it was observed as under:-

"33. It is clear from the reading of the aforesaid judgements that the ordinary principle of grant of reinstatement with full back wages when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatory required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularisation (see State of Karnataka Vs. Umadevi (3) 17). Thus, when he cannot claim for regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay, in such a situation, giving the relief of reinstatement that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of principle of last come first go, vis. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated, in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement in such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such relief can be denied."

14. Having regard to the recent judicial trends and duration of service rendered by the claimant/workman, an amount of Rs.1 lakh appears to be just and reasonable. Hence, management is directed to comply the award within two months from the notification of the award by the Central Government. The reference is answered accordingly.

15. Since nothing is on record to prove that workman was entitled for medical expenses from the management as such, relief with respect to the medical expenses is not legally possible.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी प्रबंधक फ़िलोर ऑरोसिलपम, विल्लुपुरम चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 50/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.06.2020 को प्राप्त हुए थे ।

[सं. एल-42012/33/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 535.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/2014) of the Central Government Industrial-Tribunal-cum Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Manager Filaure Auroshilpam, Villupuram, Chennai & Others, and their workmen which were received by the Central Government on 19.06.2020.

[No. L-42012/33/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

CHENNAI

ID No. 50/2014

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 17.04.2020

Sri A. Segaran. Sri K. Pavadai, Sri K. Krishnamurthy
Represented by Sri K. Mohandass
No. 26, 1st Floor, New Street
Koundanpalayam
Puducherry-605009 : 1st Party/Petitioners

AND

The Executive Manager
M/s Filaure Auroshilpam
Auroville Post, Vanur –TK
Villupuram District. : 2nd Party/Management

Appearance:

For the 1st Party/Petitioner Union : M/s. Ramapriya Gopalakrishnan

For the 2nd Party/Respondent : M/s. Subhang P. Nair & K. Prahlad Bhat

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/33/2014-IR(DU) dtd. 16.06.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the Management of M/s. Filaure Auroshlipam, A Unit of Auroville, Auroville Post, Vanur Taluk, Villapuram Distt. in declaring closure of the establishment at the time when the charter of demands including wage revision is pending before CGIT is legal and justified? If not, to what relief the concerned workmen entitled?*"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 50/2014 and notices were issued to both the parties for their appearance fixing the case to 10.07.2014. Both parties appeared. The case was posted to 16.07.2014 when the petitioners filed their Claim Statement. The Respondent filed its Counter and documents thereafter. The case was adjourned to some more dates directing the Respondent to file documents. The petitioners moved the Hon'ble High Court of Madras vide WP 1587/2015. The Hon'ble Court granted Interim Stay of the proceeding vide W.P. No. 1587 & MP 1/2015 vide order dtd. 13.02.2015 and thereafter the Interim Stay Order was again extended vide order dtd. 06.03.2015. The case was accordingly was listed to several dates awaiting the order of the Hon'ble Court. The Writ Petition was dismissed by the Hon'ble Court as withdrawn by the petitioners. The dismissal order of the Writ Petition dtd. 10.09.2018 was received by this Tribunal on 29.10.2018. Since the order of dismissal of the Hon'ble Court resulted in vacation of the order of stay. The petitioners were accordingly directed to file their respective Affidavit-Evidence on 18.03.2019. None appeared on that day. Despite of repeated adjournments (almost 6 adjournments) in the year 2019, the case was again dragged to the year 2020 only due to non-cooperation of the petitioners. However, for the ends of justice the petitioners were afforded with some more opportunities by re-listing the case on 06.02.2020, 06.03.2020 and 16.03.2020. The petitioners did not turn up to file their Affidavit-Evidence.

3. As such in view of the discussion held in preceding paragraphs it appears that none of the petitioners has got any interest to proceed with the case even when the Tribunal suo-moto afforded sufficient opportunities to them. Accordingly, due to non-appearance and participation in the proceeding by the Petitioners, this Tribunal is constrained to conclude the proceeding as there exists no dispute for adjudication as per the reference.

In the result the ID stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 17th April, 2020)

नई दिल्ली, 3 जुलाई, 2020

का.आ. 536.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, यूआरसी एनसीसी ग्रुप मुख्यालय, मदुरै चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 93/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.03.2020 को प्राप्त हुए थे ।

[सं. एल-14012/23/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 93/2017) of the Central Government Industrial-Tribunal-cum Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman URC NCC Group Headquarters, Madurai, Chennai & Others, and their workmen which were received by the Central Government on 20.03.2020.

[No. L-14012/23/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID No. 93/2017

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 16.03.2020

Sri O. Rajendran : 1st Party/Petitioner

AND

1. The Chairman/President
   URC NCC Group Headquarters
   P&T Nagar Main Road
   Madurai-625002 : 2nd Party/1st Respondent
2. The Manager
   NCC Group Canteen
   Madurai-625002 : 2nd Party/2nd Respondent
3. The Deputy Director
   Golden Palm Canteen, Palayamkottai
   Tirunelveli Distt-627002 : 2nd Party/3rd Respondent
4. The Assistant Manager
   Golden Palm Canteen Extension
   P&T Nagar
   Madurai : 2nd Party/4th Respondent

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/1st, 2nd, 3rd & 4th Respondent : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-14012/23/2017–IR (DU) dtd. 29.08.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

> "*Whether the action of the Chairman, URC, NCC Group Canteen Headquarters, Visalakshipuram, P&T Nagar Main Road, Madurai in effecting transfer order upon Sri O. Rajendran, an Ex-Sales Assistant to Golden Palm Canteen Extension Counter (Military Canteen), P&T Nagar, Madurai w.e.f. 01.01.2016 (who is under deemed termination) till his remaining period of employment is legal and justified? If not, to what relief the workman is entitled to?*"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 93/2017 and notices were issued to both the parties for their appearance fixing the case to 02.01.2018. Since then, the case is dragged for such a long period till 06.03.2020 intervening almost 14 adjournments i.e. 6 adjournments in the year 2018 viz. 30.01.2018, 14.03.2018, 24.05.2018, 01.08.2018,

15.10.2018 & 28.12.2018. The case is posted for the same purpose to another 7 adjournments in the year 2019 i.e. 12.03.2019, 22.04.2019, 03.06.2019, 08.07.2019, 26.08.2019, 14.10.2019, 25.11.2019. Neither the petitioner nor any authorized representative / counsel appeared on behalf of him despite of adjournments. Even then for the interest of justice, the Tribunal further adjourned the case suo-moto to 04.02.2020 and 06.03.2020 for the purpose of appearance of both parties and for filing of Claim Statement.

It appears the petitioner is not interested to proceed with the case even if sufficient opportunities were afforded to him for appearance and to represent his case. In the given circumstance, it is felt not to list the case to any other date for the same purpose. In such circumstance, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government vide dtd. 29.08.2017. The case is liable for dismissal due to non-cooperation and default in appearance of the petitioner.

In view of the discussion held in preceding paragraph, there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 16th March, 2020)

नई दिल्ली, 3 जुलाई, 2020

का.आ. 537.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, महाप्रबंधक, एचआर, बीएपी/भारत हेवी इलेक्ट्रिकल्स लिमिटेड, तिरुचिरापल्ली, चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 07/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.03.2020 को प्राप्त हुआ था ।

[सं. एल-42011/156/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 537.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2019) of the Central Government Industrial-Tribunal-cum Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, HR BAP/Bharat Heavy Electricals Limited, Tiruchirapalli, Chennai & Others, and their workmen which were received by the Central Government on 20.03.2020.

[No. L-42011/156/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID No. 7/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 21.02.2020

Sri M. Mohd Saleem
General Secretary
Engineers/Officers Union
Bharath Heavy Electricals
Tiruchirapalli-620014 : 1st Party/Petitioner Union

AND

The General Manager, HR
BAP/Bharat Heavy Electricals Limited
Tiruchirapalli-620014 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Respondent : Advocate Sri A.V. Arun, B. Chinammal

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/156/2017-IR (DU) dtd. 03.01.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

1."Whether the SA/SB-O Supervisors can be considered as workmen as defined under ID Act, 1947? 2. Whether the action of Management of M/s Bharat Heavy Electricals Limited is justified in deviating and implementing the promotion policy? If not, to what relief the members of the Engineers/Officers Union is entitled to?"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 7/2019 and notices were issued to both the parties for their appearance fixing the case to 12.02.2019. Since then, the case is dragged for such a long period till 07.02.2020 intervening almost 7 adjournments i.e. 6 adjournments in the year 2019 viz. 23.04.2019, 28.05.2019, 07.07.2019, 22.07.2019, 09.09.2019, 22.10.2019 and 09.12.2019, 1 adjournment in the year 2020 i.e. 07.02.2020 was made for the same purpose. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner's Union (represented through the General Secretary), there was no progress held in the proceeding. Neither the Authorized Representative, the General Secretary on behalf of the Union nor any member of the Union preferred to enter appearance. No Counsel on behalf of the Petitioner Union appeared before this Tribunal. At no point of time any petition for adjournment was moved by the petitioner, to file their Claim Statement.

Thus, it is held that the neither the Petitioners (members of the First Party Union) individually, nor the General Secretary, Representative of the Union are interested to proceed with the dispute raised in the reference. The non-appearance and non-participation in the proceeding by the Petitioners or their Authorized Representative, constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID case stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 21st February 2020)

नई दिल्ली, 3 जुलाई, 2020

का.आ. 538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स परियोजना निदेशक, एनएचएआई, मदुरै, चेन्नई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 15/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.03.2020 को प्राप्त हुआ था।

[सं. एल-42011/187/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 538.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2019) of the Central Government Industrial-Tribunal-cum Labour Court CGIT Chennai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Project Director, NHAI, Madurai, Chennai & Others, and their workmen which were received by the Central Government on 20.03.2020.

[No. L-42011/187/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID No. 15/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 21.02.2020

The General Secretary Tamilnadu General Workers Union No. 2/1, Kovoor, Vaidhyanathan Salai Chintadripet Chennai-600002		:	1st Party/Petitioner Union
	AND		
1.	The Project Director, NHAI, Madurai	:	2nd Party/1st Respondent
2.	The General Manager M/s. Madhucon Projects Hyderabad-500033	:	2nd Party/2nd Respondent
3.	The Plaza Manager Madurai Tuticorin Expressways, Tuticorin	:	2nd Party/3rd Respondent
4.	Sri Rajkumar, Managing Director M/s. Standard Domestic and Indl. Security Pvt. Ltd., Coimbatore-641044	:	2nd Party/4th Respondent
5.	The Management Techsture Technologies Ahmedabad-380054	:	2nd Party/5th Respondent
6.	Sri Sudalaimani C/o MTEL Toll Plaza (Pudhur Pandiyapuram Toll Plaza) Tuticorin-628002	:	2nd Party/6th Respondent

Appearance:

For the 1st, 2nd, 4th, 5th & 6th Party/Respondent	:	None
For the 3rd Party/Respondent	:	Advocate M/s. C. Sasikumar

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/187/2018-IR (DU) dtd. 30.01.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the demand of the General Secretary, Tamil Nadu General Workers Union vide letter dtd. 19.12.2016 under Section 2(k) petition of Industrial Disputes Act, 1947 in respect of the new wage settlement against the management of M/s Madhucon Projects Ltd., Hyderabad & M/s. Madurai*

Tuticorin Expressways Ltd., Tuticorin Toll Plaza, Pudhur Pandiyapuram Village, Contractor of NHAI, Madurai is legal and justified? If not, to what relief the concerned workman are entitled to?"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 15/2019 and notices were issued to both the parties for their appearance fixing the case to 25.03.2019. Since then, the case is dragged for such a long period till 07.02.2020 intervening almost 7 adjournments i.e. 6 adjournments in the year 2019 viz. 13.05.2019, 02.07.2019, 22.07.2019, 09.09.2019, 22.10.2019 & 09.12.2019 and 1 adjournment in the year 2020 i.e. 07.02.2020. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner's Union (represented through the General Secretary), there was no progress held in the proceeding. Neither the Authorized Representative, the General Secretary on behalf of the Union nor any of the member of the Union appeared before this Tribunal nor at any point of time any petition for adjournment is moved by the First Party Petitioner Union to file their Claim Statement.

3. Thus, it is held that neither the Petitioners individually nor being represented through the General Secretary of the Union are interested to proceed with the dispute as raised in the reference. The non-appearance and non-participation in the proceeding by the Petitioners or their Authorized Representative, constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 21st February, 2020)

नई दिल्ली, 3 जुलाई, 2020

का.आ. 539.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कंबाइन मैनपावर एजेंसी, भुवनेश्वर, ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 04/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.06.2020 को प्राप्त हुआ था।

[सं. एल-42012/02/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 539.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2013) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Combine Manpower Agency, Bhubaneswar (ORISSA), Odisha & Others, and their workmen which were received by the Central Government on 03.06.2020.

[No. L-42012/02/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 4 OF 2013

Dated, Bhubaneswar the 17th April, 2020

Present: Shri B. C. Rath, Presiding Officer,
Labour Court, Bhubaneswar.

Between:

1. Combine Manpower Agency
Plot No. 2132/4299, Nageswar Tangi,
Rashmi Tower, Bhubaneswar (ORISSA).

2. Shri B.K. Mandal
Inchage, Homeopathy Research Institution,
Marichokote Lane, Labanikhia Chak, Puri ...First party Managements

AND

1. Shri Tiki Nayak,
Narendrakon Harijon Sahi,
PO. Kumbharpada, Puri.

2. Shri Dutia Nayak,
Balisahi, Saradadevi Road
Harijan Basti, Puri. ...Second party Workmen

Appearances:

NONE : For first party Management No.1.

Dr. Arati Soren. : For first party Management No.2.

Shri Tiki Nayak

Shri Dutia Nayak : Second party workmen themselves

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication for its Order No. L-42012/02/2012 (IR(DU)) dated 09.01.2013 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial disputes Act, 1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "1. Whether the action taken by the Combine Man-power Agency, Plot No. 2132/4211, near Rashmi Tower, Nageswar Tangi, Bhubaneswar-2 working under the Assistant Director In Charge, Homeopathy Regional Research Institute, Puri in terminating the services of two workmen namely Shri Tiki Nayak and Shri Dutiya Nayak in February, 2011, without complying Section 25-F of the ID Act, 1947 is legal and justified? What relief both the workmen are entitled to ? 2. Whether the action taken by the mgt of the Assistant Director in Charge, Homeopathy Regional Research Institute, Puri in not considering the re-engagement of the concerned sweepers in cleaning and sweeping work in their Estt in the present system of arrangement or with the newly engaged contractor is appropriate and justified ? What relief both the workmen are entitled to ?"

2. The case of the second party workmen as emerging from their statement of claim is that the disputant workmen namely Sri Tiki Nayak joined service in the year 1999 and Sri Dutiya Nayak joined in the year 2001 on daily wage basis under the first party management No.2 to work as Sweepers. They were receiving wages directly from the management No.2 at the rate of minimum wages as notified from time to time by the Government of India. The job of sweeping and cleaning of the premises of the office of the first party management No.2 is perennial in nature and both the disputants were performing their duties with all sincerity and devotion with utmost satisfaction of the authority of the said management No.2. They worked continuously and uninterruptedly from the date of their joining till they were refused employment in February, 2011. It is their further claim that they were paid wages directly by the first party management No.2 initially. Suddenly, the method of their engagement and payment of wages was changed in a camouflage manner by showing them as

contractual labour being engaged through the contractor/outsourcing agency of the management No.1. Their such contractual engagement through the management No.2 was given effective without their knowledge and consent. Hence, such change of service condition was unfair and prohibited under the ID Act. It has been asserted by the disputants that they worked for more than 240 days in each calendar year preceding to their termination in the month of February, 2011. It is alleged by them that the management No.2 has adopted the method of contractual appointment through outsourcing agency to avoid the liabilities of regularizing their services and extension of service benefits to which the Government employee is entitled. When they put-forth a demand before the authority of the management No.2 for regularization of their services, new contractual labourers were given appointment after disengaging them. Hence, they raised a dispute before the labour machinery resulting in the reference as mentioned above.

3. The first party management No.1 i.e., contractor/outsourcing agency has not contested the claim in spite of due notice for which it has been set ex-parte. The first party management No.2 principal employer i.e. Incharge, Homeopathy Institution, Puri has contested the claim taking a stand that the reference is not maintainable against it since there was no relationship of employer and employee between it and the disputants. That apart, the management No.2 being a research institute is not an industry and as such, it does not come under the purview of the ID Act. On approval of the Central Council for Research in Homeopathy, which is a autonomous body in the Department of Ayush, Ministry of Health & Family Welfare, Government of India, the management No.2 invited quotations from the specific agencies for outsourcing the services two sweepers. Thereafter, it entered into an agreement with the first party management No.1 for engagement of two sweepers through the said agency. The disputants were sponsored and deployed by the management No.2 to discharge the duties of sweeper as per the agreement dated 22.2.2008. Both the disputants were allowed to render their services being deployed by the management No.2 due to renewal of agreement from time to time. It is asserted by the said management that the disputants were deployed on daily wage basis through the contractor/outsourcing agency and as per the agreement the services of sweepers would be discharged or discontinued when ever it was not needed or the outsourcing agency failed to supply competent contractual sweepers to discharge the duties. It is the stand of the management No.1 that payment was made to the outsourcing agency for such contractual sweeping and cleaning of its premises and the disputants were not under its direct pay roll. Since the disputants were deployed and engaged through the management No.1, there was no scope for it to remove or to disengage the disputants. On the aforesaid pleading, the management No.2 has made a prayer for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues were settled for just adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable under the Industrial Disputes Act ?

ii) Whether the action taken by the Combine Man-power agency, Plot No.2132/4211, near Rashmi Tower, Nageswar Tangi, Bhubaneswar-2 working under the Assistant Director In-charge, Homeopathy Regional Research Institute, Puri in terminating the services of two workmen namely Shri Tiki Nayak and Shri Dutiya Nayak in February, 2011, without complying Section 25-F of the ID Act, 1947 is legal and justified ?

iii) Whether the action taken by the management of Assistant Director In-charge, Homeopathy Regional Research Institute, Puri in not considering the re-engagement of the concerned Sweepers in cleaning and sweeping work in their Estt. In the presentsystem of arrangement or with the newly engaged contractor is appropriate and justified ?

iv) What relief both the workmen are entitled to ?

5. In order to establish their claims, one of the disputants namely Sri Tiki Nayak has examined as W.W.1 and filed the copies of Orders dated 27.2.2010, 22.2.2008 and 22.2.2010 issued by the management No.1, notice dated 18.1.2010 issued by the management No.1, Order dated 24.12.2008 issued by the management No.1, failure of conciliation of A.L.C.(C), Bhubaneswar dated 22.12.2011 and the letter dated 4.3.2008 maked as Ext.1 to Ext.7 whereas, the management No.2 has examined its Accountant as M.W.1 to refute the claim of the disputants.

FINDINGS

6. On a mere reading of the statement of claim filed by the disputants and the oral testimony of W.W.1 in the Tribunal, it is found that the disputants have claimed to have been engaged directly by the management No.2 and they were under its pay roll before 2008. Besides, it is their allegation that their termination from service in

the month of February, 2011 was illegal and in violation of provision of Section 25-F of the Act since they were not paid any retrenchment compensation and notice pay before their termination as contemplated under Section 25-F of the Act. Be that as it may, the onus/burden lies on the disputants to prove that they were under direct employment and pay roll of the first party management No. 2 before 2008 and they completed 240 days service continuously and uninterruptedly in a calendar year preceding to their disengagement in February, 2011. As per the settled principle of the Hon'ble Apex Court, such averments of 240 days continuous service in a calendar year cannot be proved by self assertion of the disputants only and they should be lead credible evidence to infer such stand in order to shift the burden to the employer to establish that no provision of the Act was violated by refusing employment to the disputants.

7. Coming to the case at hand, it is found that all documents relied upon by the disputants are documents related to the year 2008, 2010 and 2011. There is nothing in the contents of such documents from which it can be inferred that the disputants were working directly under the control and supervision of the first party management No. 2 and they were under direct pay roll of the said management either from the year 1997 or 2001. On the other hand, it can be inferred from those documents that the management No. 1 being an outsourcing agency and under contractual obligation with the first party management No. 2 had engaged and deployed the disputants for sweeping and cleaning of the hospital and the office of the first party management No.2. Ext.3 reveals that the duty chart was made by the said outsourcing agency management No.1. The attendance register of such sweeping staff seems to have been maintained by the management No.1 outsourcing agency and certified by the management No.2. There is not a single scrap of paper or document to show that the disputants were ever engaged or employed by the first party management No.2 or they received any wages from the said management. It is now well settled that if industrial adjudicator finds that contract between the principal employer and a contractor/outsourcing agency is sham, nominal or merely a camouflage to deny employment benefits to the employee and that there in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well recognized tests to find out whether the contract labour is the direct employee of the principal employer are (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. It is for the employee to aver and prove that he was paid salary directly by the principal employer and not the contractor. The disputants have failed to discharge this onus. Even in regard to second test they have also failed to show that they were engaged directly or they were working directly under the control and supervision of the management No. 2 either prior or after 2008. It is well settled that if the contract is for supply of labourer, necessarily, the labour supplied by the contractor will work under the direction, supervision and control of the principal employer and that would not make the worker a direct worker of the principal employer, if the salary is paid by the contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. Keeping in view such settled principle, if the evidence advanced by the disputant is examined it is crystal clear that assigned by the contractor/management No.1 they worked as Sweepers in the establishment of the management No.2. The contractor made the choices and allotted the duty. In cross-examination the disputant Tiki Nayak admitted that they were receiving wages from the contractor. They have no letter of appointment or document to show that they were engaged by the management No.2. Hence, it can be safely held that there is no employer and employee relationship between the management No. 2 and the disputants. Therefore, the claim as raised by the disputants against the said management has no merit for consideration.

8. So far the claim of the disputants against the management No.1 is concerned, it is to be stated that the disputants have not whispered anything against the said management/contractor. That apart, the documents filed by the disputants more particularly Ext.4 reveals that the management No.2 had given a prior notice regarding disengagement of the disputants as the said agency was yet to receive any communication from the management No.2 for supply of labourers for cleaning and sweeping work. Therefore, I do not find it just and appropriate to fix any liability on the management No.2 in regard to discontinuance of the services of the disputants in the establishment of the management No. 2.

9. For the reasons discussed above, it can be safely said that the management No. 2 is no way in any contractual obligation for reengagement of the disputants to work as Sweeper. As such, the action of the management No.1 in discontinuing the services of the disputants in the establishment of the first party management No.2 cannot be held to be illegal or unjustified and the disputant workmen are not entitled to any relief from the first party management No. 2.

Accordingly reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 540.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, भुवनेश्वर , ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 31/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.05.2020 को प्राप्त हुए थे।

[सं. एल-42011/110/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2015) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintending Archaeologist, Archeological Survey of India, Bhubaneswar, Odisha & Others, and their workmen which were received by the Central Government on 19.05.2020.

[No. L-42011/110/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 31 OF 2015

Dated, Bhubaneswar the 17th March, 2020

Present:

Shri B. C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar.

Between:

The Superintending Archaeologist,
Archeological Survey of India, Bhubaneswar Circle,
Block – VI, Tushali Apartment, Satyanagar,
Bhubaneswar (Odisha) – 751007. ...First party management

AND

The President,
Archaeological Survey of India Workers Umon,
Plot No. 32-Ashoknagar,
Bhubaneswar (Odisha) – 751009. ...Second party Union

Appearances:

NONE : For first party management.

Sri N.K. Mohanty : For Second party Union.

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-42011/110/2015 IR(DU) dated 15.09.2015 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

"Whether the action of Superintending Archaeologist Archaeological Survey of India, Bhubaneswar in not considering for payment of 1/30th wages to 33 workers (as per list) working at Jagannath Temple, Puri working continuously at par with regular Group-D Employees is appropriate and justified ? If not what relief the workmen are entitled to ?"

2. Statement of claim has been filed by the second party Union with a contention that the first party management namely, Archaeological Survey of India under the control of Ministry of Culture, New Delhi is covered under the definition of 'industry' as defined in the Act. The first party management at Bhubaneswar Circle is entrusted with the responsibility of protection and development of 92 numbers of different monuments situated in Odisha including Puri Jagannath Temple. Regular employees numbering 110, 150 number of workmen under 1/30th wages category and about 120 numbers of casual labourers/workmen are under engagement of the first party management for protection and development of monuments in Bhubaneswar Circle of the management. The disputant workmen 33 in numbers as envisaged in the schedule of reference are being engaged along with other regular employees and the workmen under 1/30th wages category for protection, repairing, maintenance and development of Jagannath Temple. They have been working for last 8 to 10 years under direct supervision and control as well as payment of the first party management for the job of Stone Cutting, Dressing and fitting, pipe fitting, application of chemicals, cleaning and colour painting etc. for the Puri Jagannath Temple. Their work are permanent and perennial in nature. Their nature of jobs are identical and similar to the nature of jobs performed by the workmen under 1/30th wages category. All the disputant workmen have completed 240 days of work in each calendar year from the date of their engagement. It is the claim of the second party Union that the disputant workmen are not paid under the scheme of 1/30th wages like other casual workmen in the category of 1/30th wages even though they are doing the identical and similar nature of work as performed or discharged by the employees of the management under regular and in the category of 1/30th wages scheme. Hence, they raised a dispute before the labour machinery and failure of the conciliation proceeding before the labour machinery culminated to the present reference as mentioned earlier.

3. On being noticed, the first party management appeared and filed their written statement denying and refuting the allegations raised by the disputants. In the written statement it is the stand of the first party management that it is not an industry and as such, it is not coming under the purview of the Act for which the reference is not maintainable. The above view is accepted by the Ministry of Law, Justice and Company Affairs, Government of India vide its opinion dated 29th April, 2003 and the same view is confirmed in the Judgment of the Hon'ble CGIT-cum-Labour Court , Jaipur, Rajasthan in its Award/Order dated 25.11.1999 passed in case No. CGIT/D-18/97. It is its further stand that the disputant workmen are being engaged as casual labourers intermittently on need basis and they were never entrusted with any work/job identical or similar to the jobs performed by regular employees or the workmen in the category of permanent status. The disputant workmen having been engaged casually on need basis after the year 2006 are not also covered under the scheme of 1/30th wages. The statement of claim of the second party Union is resisted on the basis of the above contention and prayer is made in the written statement for rejection of the claim. It is pertinent to mention here that after filing of the written statement and settlement of issues on the basis of pleadings of the parties, the first party management did not turn up and participate in the proceeding/hearing as a result of which it has been set ex-parte.

4. In order to establish its claim, the second party Union has examined one of the disputants namely, Sri Niranjan Behera as W.W.1 and filed the documents such as, copies of DOP & T circular regarding payment of 1/30th wages and condition of service, information obtained through RTI from the management regarding revenue collection from State of Odisha, conciliation notice of ALC (C). Bhubneswar, minutes of discussion and settlement with ASI, Bhubaneswar. list of workmen working at Puri Jagannath Temple, charter of demand dated 9.2.2015, notice of conciliation of ALC (C), Bhubaneswar dated 24.3.2015 and tripartite agreement dated 14.2.2010 with ASI, Bhubaneswar marked as Ext.1 to Ext.8.

5. Keeping in view the pleadings advanced by the parties in their statement of claim and the written statement it is to be determined whether the reference is maintainable in the eye of law and the disputants are entitled to receive wages/pay under the scheme of 1/30th wages as per the GOPT circular OM No.49014/2/86 Esttt.(C) dated 7th June, 1988.

6. Coming to the issue of maintainability of the reference and keeping in view the objection taken in the written statement of the first party management that the management of ASI is not an industry, it may be stated here that the opinion advanced by the Ministry of Law whether the ASI is an industry as defined under the Act has no binding force on this Tribunal so also the observation of the Hob'ble CGIT-cum-Labour Court, Jaipur, Rajasthan made in its Order/Award dated 25.11.1999. The uncontroverted and unchallenged evidence of the second party Union as led in Ext.2 reveals that the first party management has been earning revenue by

collecting entry fee from the visitors in respect to some of the monuments whose repair and development are entrusted to them. Keeping in view the principle set out by the Hon'ble Apex Court in a catena of decisions including in the case of Bangalore Water Supply & Sewerage Board Vrs. A.Rajappa reported in 1978 Lab. I.C. 467 (SC), the first party management of ASI can be safely qualified under the definition of 'industry' as defined under Section 2(j) of the Act. Hence, the contention as raised in the written statement by the first party management in regard to maintainability of the reference on account of the management of ASI is not an industry as defined in the Act has no merit for consideration.

7. Coming to the demand of the Union for payment of 1/30th wages to the disputant workmen as per Circular No. 49014/2/86 dated 7th June, 1988 of DOPT, it is found from the unchallenged and uncontroverted oral testimony of W.W.1 and pleading advanced in the statement of claim that a tripartite agreement was signed between the second party Union and the management of ASI in presence of the Deputy Chief Labour Commissioner (C), Bhubaneswar whereby, it is agreed by the management of ASI to provide work/engagement of 20 days average in a month to certain numbers of casual workmen at Puri Jagannath Temple site. The agreement under Ext.8 seems to have been executed on 14.12.2010. As per the terms of settlement, the management No.1 had agreed to engage 18 numbers of casual workmen with effect from 16.12.2010. It was also agreed to provide work of 20 days to its causal workmen in every month. No credible evidence except oral assertion of W.W.1 has been produced or led before this Tribunal to establish that all 33 disputants named in the reference have been engaged as casual workmen/labourers with effect from 16.12.2010. There is also no credible evidence except oral assertion of W.W.1 that the disputants are provided 20 days employment in every month as per the settlement under Ext. 8. The Circular making provision of 1/30th of pay requires that if the nature of casual workers and regular employees are the same, casual workers should be paid wages at 1/30th of pay at the minimum of the pay scale of the regular post plus D.A. If the nature of work is different, minimum wages as notified by the State Government/Undertakings is payable as per the Minimum Wages Act, 1948. It provides further that the benefit will be available if the casual labourer has put in at least 240 days of service in a year and he should have two years of continuous service as casual labourer. Be that as it may, a duty/onus is cast upon the second party to establish that the disputants have been working as casual workers continuously for last two years and each of them worked for 20 days at least in every month during the above two years. Further, it is to be established that nature of work performed by the disputants are identical or similar in nature of the work performed by the regular employees. That apart, it cannot be over sighted that the Circular was introduced keeping in view the direction of the Hon'ble Supreme Court arising out of the writ petition filed by Sri Surendra Singh and others Vrs. Union of India. As per the settled principle of Hon'ble Apex Court, the Scheme of 1/30th wages would be applicable to the casual workers under employment on the date of issue of Office Memorandum. The scheme does not seem to be a ongoing process. Keeping in view the oral testimony of W.W.1 and terms of settlement under Ext.8, it can be safely said or held that none of the disputants is under employment or engagement of the management of ASI when the circular of 1/30th of pay was introduced. The settlement Ext. 8 lead to an inference that since the disputants were not provided engagement regularly, a settlement was arrived to ensure their engagement and to provide at least 20 days work in a month. Therefore, it can be stated that the disputants were not in employment regularly as a casual labourers and they were not engaged for 20 days in a month till in the year 2010. Hence, doubt can be entertained regarding applicability of the scheme of 1/30th wages to the disputants. There is also no evidence at this stage or assertion of the W.W.1 in his affidavit evidence that pursuant to the settlement before labour machinery on 14.02.2010 the disputants are being engaged 20 days in a month to work as casual workmen like with other regular or casual workmen under 1/30th pay. Hence, the circular of 1/30th pay seems to be not applicable to them.

8. For the reasons mentioned above, the first party management is not legally bound to make provision of payment of wages under the scheme of 1/30th of pay to the disputants. Hence, the claim raised by the second party Union is not enforceable in the eye of law. Therefore, no illegality or un-justification seems to have been committed by the first party management in not considering for payment of 1/30th wages to the disputants who are working at Jagannath Temple, Puri.

Accordingly reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 541.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फाल्कन सुरक्षा सेवाएँ, खुर्द, भुवनेश्वर, ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 21/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.04.2020 को प्राप्त हुए थे।

[सं. एल-42011/24/2006-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 541.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2016) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Falcon Security Services, Khurda Bhubaneswar, Odisha & Others, and their workmen which were received by the Central Government on 29.04.2020.

[No. L-42011/24/2006-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 21 OF 2016

Dated Bhubaneswar, the 28th February, 2020

Present: Shri B. C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar.

Between:
M/s. Falcon Security Services,
Noor Manzil, Near Housing Board Colony,
Khurda (Odisha) – 752055.
The Director (Instt.),
National Research Inst.of Ayurved Drug Development,
Bharatpur, Bhubaneswar (Odisha) – 751003. ...First party management

AND

The Vice President
Contract & Construction Labour Union, 32-Ashok Nagar,
Bhubaneswar (Odisha) – 751009. ...Second party Union

Appearances:

NONE : For first party management No.1.

Sri S. K. Tripathy : For first party management No.2.

Sri N.K. Mohanty. : For second party Union.

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-42011/24/206–IR(DU) dated 29.03.2016 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as "the Act") and the terms of reference reads as foelows:

'Whether the action of the management of /s. Falcon Security Services in terminating the serevices of Shri Samir Rana & 4 other security guards namely Shri Satyanarayan Patra, Shri Sarat Chandra Mishra, Shri Sunil Kumar Palai & Shri Prakash Chandra Das, Security Guards by way of refusing employment w.e.f. 01.08.2015 at the direction of principal employer i.e. NRIADD, Bhubaneswar without following the principles of natural justice on the ground of dereliction of duty is legal & justified ? If not, what relief the workmen are entitled to ?'

2. The case of the second party Union is that the disputant workmen named in the schedule of reference were engaged/employed with effect from May, 2012 with others numbering more than 40 being hired through the outsourcing agency, management No.1. They were performing their duties sincerely and honestly to the satisfaction of the management No.1. But, the management No.2 refused employment/engagement to the disputant workmen from 31.7.2015 onwards without any sufficient reason and cause whereas, other Security Guards were allowed to perform their duties. It is alleged that no prior notice or notice pay in lieu of notice and retrenchment compensation was provided to the disputant workmen before refusing them employment. The workers junior to them were allowed to continue in employment. The disputants having completed more than 240 days of engagement/employment continuously and uninterruptedly in each calendar years preceding to their alleged retrenchment or refusal of employment are entitled to notice pay in lieu of notice and retrenchment compensation. Hence, such refusal of employment to the disputants is illegal and unjustified as well as unsustainable in the eye of law. According to the second party, the management No.1 was the contractor/outsourcing agency in the name sake whereas, the management No.2 is the actual employer and supervision authority of the disputants. The disputants were working and discharging their duties as per the direction/instruction of the management No.2. The management No.1, contractor/outsourcing agency has no control in allotment of work to the disputant workmen. The transaction/agreement between the management No.2 and the management No.1 was a sham and camouflage for the purpose of avoiding the liability and responsibility of an employer to its employee. The disputants were refused employment/engagement on 1.8.2015 when one M/s. Primer Vigilance and Security Service Pvt. Ltd., Bhubaneswar was selected as an outsourcing agency to provide the Security Guards. The said agency allowed other Security Guards to continue in their job whereas, the disputants were refused employment without any reason as well as without compliance of the provisions of Section 25-F and 25-G of the Act. Such refusal of employment amounting to retrenchment was illegal and therefore, the disputant workmen are entitled to be reinstated with all service benefits including back wages. According to the second party Union, a dispute was raised before the labour machinery and the conciliation effort initiated by the labour machinery was failed consequent upon which the reference is made.

3. The management No.1, the service provider did not choose to contest the claim inspite of being noticed by the Tribunal and as such, it has been set ex-parte. But, the management No.2, Director(Instt.), National Research Inst. Of Ayurved Drug Development, Bhubaneswar has contested the claim denying the pleadings advanced by the second party Union in toto. It is the stand of the management No.2 that in no point of time the disputants were ever engaged or employed by it. They never worked directly under the control and supervision of it. They were not under the pay roll of it and by virtue of an agreement/transaction the management No.1 was entrusted to provide Security Guards to perform works. The management No.2 was paid for providing Security Guards. The disputants were under the pay roll and control of the management No.1. There was no employer and employee relationship between the management No.2 and the disputants and as such, question did not arise for refusal of employment to the disputants by the management No.2. The disputants have no right to raise a dispute against the management No.2. As such, prayer has been made for rejection of the statement of claim so far the management No.2 is concerned.

4. On the aforesaid pleadings of the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

i) Whether the present reference is maintainable so far the management No.2 is concerned ?

ii) Whether the firtst party managementNo.2 is an industry within the meaning of Industrial Disputes Act?

iii) Whether there is any employer and employee relationship between the so-called workers with the management No.2 ?

iv) Whether the action of the management of M/s. Falcon Security Services in terminating the services of Sri Samir Rana & 4 other security guards namely Sri Sayanarayan Patra, Sri Sarat Chandra Mishra, Sri Sunil Kumar Palai & Sri Prakash Chandra Das, Security Guards by way of refusing employment with effect from 01.08.2015 at the directionof principal employer i.e. NRIADD,

Bhubaneswar without following the principles of natural justice on the ground of derelication of duty is legal & justified ?

v) If not, what relief the workmen of the second party Union are entitled to ?

5. To substantiate its claim, the second party Union has examined Sri Sarat Chandra Mishra as W.W.1 and relied upon the documents like copy of letter dated 4.5.2012 issued by the management No.2 and copy of letter dated 1.7.2015 issued by the management No.2 marked as Exts.1 and 2 whereas, the management No.2 has examined its Security In-charge as M.W.1 and filed the documents like copy of agreement of job contract dated 1.5.2012, copy of letter dated 2.5.2012 of the management No.2, copy of letter dated 2.5.2012 of the management No.1, copy of agreement dated 1.12.2014 between the management No.1 and the management No.2, copy of the wages bill of M/s. Falcon Security Service, copy of letter dated 11.12.2015 of the Director of the management No.2 to the ALC(C), Bhubaneswar, copy of the letter dated 18.2.2016 addressed to the Ministry with postal receipts, copy of bye-law of the Central Council of management No.2, copy of the letter dated 1.7.2015 of the Central Council, copy of the letter dated 28.7.2015 of the management No.2, copy of the letter No.89/15 of the management No.1 to the management No.2 and the copy of the letter dated 17.11.2015 of the management No.2 marked as Ext.A to Ext.M, to refute the claim of the second party Union.

FINDINGS

6. Refusal of employment to the disputant workmen in the establishment of the management No.2 being the sole dispute between the parties, it would be just and appropriate to consider the same at the first instance. As it appears from the pleadings and evidence of the contesting parties to the reference that there is no serious dispute to the fact that the management No.2 had hired services of Security Guards through the management No.1 M/s. Falcon Security Services for the period May,2012 to July, 2015. In that process the disputant workmen were engaged from May, 2012 till 31.7.2015 as Security Guards. It is also emerging from the pleadings of the parties that the period of contract/agreement between the management No.1 and management No.2 having been expired with effect from 1.8.2015, new outsourcing agency M/s. Primer Vigilance Security Service Pvt. Ltd. has been entrusted to provide Security Guards to the management No.2. It is also emerging from the evidence of the parties that no appointment letter was issued by the management No.2 to the disputant workmen. W.W.1 has admitted in his cross-examination that he was receiving the wages from the contractor. He has also admitted that no appointment letter or termination letter was ever issued by the management No.2. Thus evidence is wanting to establish the employer and employee relationship between the management No.2 and the disputant workmen. So far the management No.1 is concerned, the evidence of the second party Union is overwhelming to establish that the disputants were employed/engaged by it. They were under the pay roll of the management No.1 and they worked continuously and uninterruptedly for more than 240 days in each year during their employment under the management No.1 from May, 2012 to 31.7.2015. It is evident that the disputant workmen were not given prior notice or notice pay in lieu of notice and retrenchment compensation despite they were refused engagement/employment after 31.7.2015. Therefore, the management No.1 being their employer it is liable for any violation of the provision of Section 25-F of the Act. Refusal of employment to the disputant workmen amounts to retrenchment. The said retrenchment is found to be illegal on account of non-compliance of provision of Section 25-F of the Act.

7. Coming to the relief to which the disputant workmen are entitled, it appears from the pleadings and evidence of the parties that the term of contract with the management No.1 having been expired, the management No.1 has no scope to employee the disputant workmen in the establishment of the management No.2. There is also no evidence to suggest if the management No.1 has taken any contract of outsourcing agency in any other organization so as to enable him to reinstate the disputant workmen and engage them as Security Guards under its employment. The disputants worked for only three years wit the said outsourcing agency (management No.1). Having regard to the above facts and circumstances, it is not a fit case wherein reinstatement can be directed. However, refusal of employment/retrenchment being in violation of provision of Section 25-F of the Act, the management No.1 is directed to pay a compensation of Rs.20,000/- each. Though, the management No.2 is no way concerned with the employment of the disputant workmen, the management No. 2 has responsibility and statutory duty under the Contract Labour Act to see that all legitimate wages/dues is paid to the contract labourers/hired labourers by their employer with whom it entered into an agreement/contract for providing Security Guards. It is emerging from the evidence of M.W.1 that the management No.2 needs services of more than 30 Security Guards. In the above back drops, the management No.2 is advised to look into the grievance of the disputant workmen and if possible it may take an effort to accommodate the disputant workmen in deployment of Security Guards through outsourcing agency with whom it had entered into contract.

Keeping in view the discussion and finding above, the issue of maintainability needs no answer.

8. For the discussions and analysis made above, the action of the management No.1 in terminating the services of the disputant workmen by way of refusal of employment with effect from 1.8.2015 without following the provision of section 25-F of the Act is neither legal nor justified. The disputant workmen are entitled to compensation of Rs.20,000/- (Rupees twenty thousand only) each from the management No.1.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 542.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, कृषि में महिलाओं पर अनुसंधान निदेशालय, भुवनेश्वर, ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.06.2020 को प्राप्त हुए थे ।

[सं. एल-42012/102/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 542.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2012) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Directorate of Research on Women in Agriculture Bhubaneswar, Odisha & Others, and their workmen which were received by the Central Government on 11.06.2020.

[No. L-42012/102/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 33 OF 2012

Dated Bhubaneswar, the 24th April, 2020

Present: Sri B. C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

Between:

1. The Director
Directorate of Research on Women in Agriculture,
Kalinga Studio Square, Bharatpur,
Bhubaneswar (Odisha).

2. The Manager,
M/s. Jagannath Security Service,
Plot No. 425, Chakeisihani, PO. Rasulgarh,
Bhubaneswar (Odisha) – 10. ...First party managements

AND

The Vice President,
Contract & Construction Labour Union,
32 Ashok Nagar,
Bhubaneswar (Odisha) – 751009.

Appearances:

Sri R. N. Rath : For first party management No.2.

Sri S. N. Behra : For second party workman.

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No.L-42012/102/2011 IR(DU) dated 15.02.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1948 (14 of 1947) (herein after referred to as ' the Act') and the terms of reference reads as follows:

> "Whether the action of the management of M/s. Jagannath Security Services, contractor working with the Directorate of Research on Women in Agriculture (Formerly National Research Centre for Women in Agriculture) in not allowing to do the job as Guest House Helper to Shri P. K. Nanda in the Guest House of DRRWA is appropriate and justified ? Whether it violates the principle of natural justice ? What relief the workman is entitled to and from which date ?''

2. The case of the second party workman is that he was appointed as Guest House Attendant after being duly selected by the first party management No.1 i.e. Director of Research on Women in Agriculture, Bharatpur, Bhubaneswar and he joined as such on 3.11.2008. On the advise of the said management he received monthly wages/salary from M/s. Jagannath Security Service (management No.2). According to him, he was discharging his Attendant duty continuously and uninterruptedly after his appointment till his service was refused on 19.4.2011. It is his claim that he was working directly under the supervision and control of the first party management No.1 although, he was shown being engaged through different service providers for different periods. The management No.2 was the service provider Contractor when he was refused employment for such Guest House Attendant job. He was not paid notice pay and retrenchment compensation under the provision of Section 25-F of the Act when his service was discontinued. According to him, a transfer order was issued to him by the management No.2 with a direction to join as Attendant in the Guest House of Odisha Seeds Corporation at Chandaka and such order on the part of the management No.2 was illegal and unjustified as it was a change of service condition without prior notice to him. Hence, when the said transfer order is not in accordance to the term and condition of his appointment and it is illegal and invalid. Hence, refusal to work as Attendant of the Guest House of the management No.1 amounts to termination/retrenchment for which he raised a dispute before the labour machinery. Consequently, reference is made as stated above when conciliation attempt before the labour machinery failed.

3. Both the managements have contested the statement of claim. The management No.2, service provider/contractor has taken a stand that it was issued with an work order by the management No.1 for running its guest house at Bharatpur for a period of one year. In order to run the guest house, the disputant was engaged on contract basis with effect from 1.10.2010. Since the disputant was not sincere to his duty and he was argumentative and ill-tempered as well as in the habit of uttering filthy and un-parliamentary language to the visitors of the guest house, complaint was received from the management No.1. Hence, he was transferred to work another guest house of Odisha Seeds Corporation since, the said guest house was being run by it under an agreement with the said Seeds Corporation. But, the disputant did not join in his duty. It is the contention of the management No. 2 that the disputant was never retrenched or disengaged from service. He had voluntarily abandoned his job and he had not completed more than six months under his employment. As such, compliance of the provision of Section 25-F of the Act did not arise in the case. The first party management No.1 has also refuted the allegations of the disputant with a pleading that there was no relationship of employer and employee between the parties and as such, question did not arise on its part to disengage the disputant.

4. On the aforesaid pleadings of the parties, the following issues were settled for just adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable under the Industrial Disputes Act ?

ii) Whether the refusal of employment to the workman Sri P. K. Nanda with effect from 19.4.2011 amounts to retrenchment and the same is illegal and unjustified ?

iii) If not, to what relief the workman is entitled ?

5. The disputant workman has examined himself as W.W.1 and filed the copies of the ID Card of P & A Security Service Ltd., ID card of M/s. Jagannath Security Service, ESI Card of workman, request letter dated 17.6.2011 of the workman, complaint letter of the workman to the Deputy Chief Labour Commissioner (C),

failure report of the Assistant Labour Commissioner (C), guest house charge receipt issued by the workman and PF slip marked as Ext.1 to Ext. 8 to establish his claim whereas, both the managements have not preferred to adduce any evidence.

FINDINGS

6. The pleadings and the arguments advanced by the parties reveal that the disputant workman has raised the dispute to declare the order of his transfer to work as an Attendant in the guest house belonging to Odisha Seeds Corporation as null and void claiming that he was working as an attendant of the guest house of the management No.1 being appointed at the instance of the staid management and he was working directly under the control and supervision of the said management. It is his claim that the management No. 2, outsourcing agency/contractor had no authority in his selection to act as a guest house attendant under the management No.1 and he had no power/authority to transfer him from one guest house to another guest house to work as an attendant. According to him, when his job/service is not transferrable, refusal to work as an attendant of the guest house of the first party management No.1 on a plea of transfer order amounts to retrenchment or termination of service. There being no payment of notice pay and retrenchment compensation, such termination/retrenchment is illegal being in contravention of the provision of Section 25-F of the Act. That apart, the transfer order is not legal and justified as it was a change of service condition. In order to succeed in the case, the disputant is required to establish first that he was the employee of the management No.1. In order to establish the relationship of employer and employee between the management No. 1 and the disputant workman, it is to be established as per settled principle of law, that (i) the disputant is under the pay roll of the management No.1 being appointed by him directly and (ii) he was working under the direct control and supervision of the management No.1.

7. Further, It is well settled in a catena of decisions of the Hon'ble Supreme Court including in the case between Krishna Bhagya Jala Nigama Ltd. and Mohammed Raffi reported in Civil Appeal No. 2895/2009 arising out of SLP (C) No. 245299/2005 that initial burden lies on the disputant workman to prove that he had worked for 240 days continuously and uninterruptedly in a calendar year and his service had been terminated without providing him notice pay and retrenchment compensation in order to prove his termination illegal and unjustified due to contravention of the requirement of Section 25-F of the Act. On scrutiny of the evidence of the parties oral as well as documentary, it is found that except affidavit there is no other evidence to show that the disputant was given appointment by the management No.1 to work as a guest house attendant and he was working directly under the supervision and control of the said management . Such self assertion in form of affidavit is not sufficient evidence to discharge the initial burden of the disputant workman to prove his claim. On the other hand, it is emerging from his testimony as well as his statement of claim that he was paid wages/salary by the contractor/service provider. He received wages or salary from the different contractors during his engagement as guest house attendant of the management No.1. The disputant has also admitted that he was working as a casual worker under the management No. 2 (outsourcing agency), when he was transferred to work as an attendant in the guest house of Odisha Seeds Corporation. It is apparent from the pleading and evidence of the disputant that outsourcing agencies were changed from time to time for which he was receiving his wages from different outsourcing agencies during the period of his employment as a guest house attendant of the guest house belonging to the management No.1. Be that as it may, it can be safely held that no employer and employee relationship was existing between the management No.1 and the disputant workman. Under such position, question does not arise on the part of the management No. 1 to refuse employment/engagement to the disputant workman.

8. Now coming to the question whether any illegality was committed by the management No. 2 by not allowing the disputant workman to work as guest house helper in the guest house of the management No.1, it is seen from the evidence and pleading of the disputant workman that the management No. 2 became his employer on 9.11.2010 since he became the service provider for the management No. 1 on that date. It is alleged by the disputant workman that he was refused engagement to work as guest house helper of the management No.1 with effect from 6.4.2011. It is admitted by him that he was issued with a transfer order by the management No.2 to join as a guest house helper of Odisha Seeds Corporation. A pleading has been advanced by the management No. 2 that the disputant was transferred to the guest house of Odisha Seeds Corporation on receipt of a complaint from the management No. 1 that he was misbehaving with the occupants of the guest house. It has been also pleaded that the managementNo. 2 was not allotted with the job of service provider after completion of the period of his agreement with the management No. 1. The disputant workman has not adduced any evidence to establish that the management No.2 is still continuing as outsourcing agency under the management No. 1 to run its guest house. Though, it has been pleaded that by issuing transfer order the management No. 2 has changed the service condition, there is no evidence of the disputant to suggest that as per the term and

condition of his appointment his service was not transferable. When, there is no work order for the management No. 2 to run the guest house of the management No. 1, it would not be practicable or possible on the part of the management No. 2 to engage the disputant to work as a guest house attendant of the management No. 1. Therefore, it would be difficult to hold that the management No. 2 has committed any error or illegality by transferring the disputant from one guest house to another guest house. On the other hand, it cannot be over sighted that the guest house in which the disputant was working is situated at Bharatpur whereas, the guest house of the Odisha seeds Corporation is situated at Chandaka and both the locations are adjoining to each other.

9. That apart, it is found from the evidence of the disputant that he worked from 9.11.2010 to 6.4.2011 under the management No. 2. He had not completed 240 days continuous and uninterrupted job under the said contractor. In such back drop, if it is accepted for argument sake that the disputant was refused employment/engagement on being transferred from the guest house at Bharatpur to the guest house at Chandaka, there was no need of complying the requirement of Section 25-F of the Act. From the evidence and pleading of the disputant it can be also inferred that he did not join in his new assignment as per the transfer order. In such facts and circumstances, it can not be said that he was retrenched or disengaged by the management No. 2.

10. For the facts and reasons analyzed above, I am constrained to hold that the disputant workman has failed to establish his claim that he was appointed as an attendant by the management No. 1 and there was employer and employee relationship between them. At the same time, he has also failed to establish that as per the term and condition of his appointment his service was not transferrable. He had not completed 240 days continuous and uninterrupted service under the employment of the management No. 2. On the other hand, he is found to have not complied with the transfer order of the management No. 2. In the above premises, the action of the management No. 2 i.e. M/s. Jagannath Security Service, Contractor in refusing the disputant workman to do the job of Guest House Helper in the guest house of the management No.1 cannot be said illegal or unjustified. Such action of the management No. 2 does not violate the principle of natural justice.

Accordingly the reference is answered and award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 543.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फाल्कन सुरक्षा सेवाएँ, खुर्द, भुवनेश्वर, ओडिशा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 20/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.04.2020 को प्राप्त हुए थे ।

[सं. एल-42011/23/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 543.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2016) of the Central Government Industrial-Tribunal-cum Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Falcon Security Services, Bhubaneswar, Odisha & Others, and their workmen which were received by the Central Government on 29.04.2020.

[No. L-42011/23/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 20 OF 2016

Dated Bhubaneswar, the 24th February, 2020

Present: Sri B. C. Rath, Presiding Officer,
CGIT-cun-Labour Court, Bhubaneswar

Between:

1. M/s. Falcon Security Services,
Noor Manzil, Near Housing Board Colony,
Khurda (Orissa) – 752055.

2. The Director (Instt.),
National Research Inst. of Ayurved Drug
Development, Bharatpur,
Bhubaneswar (Orissa) – 751003. ...First party management

AND

The Vice President
Contract & Construction Labour Union,
32 Ashoknagar, Bhubaneswar (Orissa) – 751009. ...Second party Union

Appearances:

NONE : For first party management No. 1.

Sri S. K.Tripathy : For first party management No. 2.

Sri N. K. Mohanty : For second party Union.

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-42011/23/2016 IR(DU) dated 29.3.2016 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as "the Act") and the terms of reference reads as follows:

> "Whether the termination of services of Shri Ismail Khan & 12 others security guards by M/s. Falcon Security Services without complying the provisions of Section 25-F of ID Act, 1947, is legal and/or justified? If not what relief the workmen are entitled to ?' 2.'Whether the disengagement of services of Shri Ismail Khan & 12 others Security Guards by M/s. Premier Vigilance & Security Pvt. Ltd. offering employment to fresh workmen in place of old and experienced workmen who were employed for more than 03 years with the said establishment i.e. NRIADD, Bhubaneswar is legal and/or justified ? If not, what relief the workmen are entitled to ?"

2. The case of the second party Union as emerging from its statement of claim is that the National Research Institute of Ayurved Drug Development, Bharatpur being an undertaking of Central Government and involved in promoting research and sales of Ayurvedic drugs and medicines is an "industry". It had hired services of more than 40 Security Guards/contract labourers for their engagement in the establishment and accordingly 13 numbers of the disputant workmen named in the schedule of reference were engaged in the establishment of the first party management No. 2 through outsourcing agency of M/s. Falcon Security Services i.e. management No. 1. The disputant workmen along with others were working in the establishment of the management No. 2 being hired through management No. 1 for more than three years continuously and uninterruptedly on a consolidated monthly wages. After completion of the agreement period, the outsourcing agency the management No. 1, the management No. 2 entered into an agreement with a new outsourcing agency namely M/s. Premier Vigilance & Security Services Pvt. Ltd. for the purpose of hiring such contract labourers. It is alleged by the second party Union that when the management No. 2 entrusted the contract for supply of contract labourers/Security Guards to its organisation, it disengaged the disputant workmen Ismail Khan and 12 others with effect from 28.11.2015 and accepted the services of new persons in their places. According to the second party Union, the disputant workmen had worked for more than 240 days in a calendar year preceding to their disengagement. But, they were refused re-employment through new outsourcing agency without prior notice or notice pay and retrenchment compensation as required under Section 25-F of the Act. Recruitment of

new incumbency as substitute to the disputants is also a violation of the provision of Section 25-G of the Act. The management No. 2 and 1 being the principal employer and the service provider respectively is under the perview of the Act and Contract Laour (Regulation & Abolition) Act,1970. Both the management No. 1 and 2 are not having license for engagement of contract labourers as required under the Contract Labour Act. Hence a dispute was raised before the ALC(C), Bhubaneswar. As the conciliation failed, the reference is made.

3. The management No.1 did not contest the case inspite of being duly noticed for which it has been set ex-parte. The management No. 2 being the principal employer has contested the case taking a stand that it being a non-profitable institute of Ayurvedic drugs, it is not covered by the term "industry" as defined in the Act. As such, the reference is not maintainable. That apart, it is his case that the disputant workmen were not its employees since it was no way connected to them for their employment under the management No.1 contractor. They were never paid wages by it. There being no relationship of employer and employee, the disputants have no claim against it under the Act. Therefore, the reference is also not maintainable against it. It is the pleading of the management No. 2 that the services of some Security Guards/contract labourers were accepted through the management No. 1 on the basis of an agreement which was valid till 7.10.2015. On expiry of the validity of the agreement a new outsourcing agency was entrusted for supply of contract labourers. As the engagement and employment to the disputants were given by the management No.1, contractor and there was no employer and employee relationship between the parties, the disputants have no relief or claim against it. Therefore, the statement of claim has no merit.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Whether the present reference is maintainable so far the management No. 2 is concerned ?

ii) Whether the first party No. 2 is an Industry within the meaning of Industral Disputes Act, 1947 ?

iii) Whether there is any employer and employee reloationship between the so-called workers with the management No. 2 ?

iv) Whether the termination of services of Sri Ismail Khan and 12 others security guards by M/s. Falcon Security Services without complying the provisions of Section 25-F of the I.D. Act, 1947 is legal and/or justified ?

v) Whether the disengagement of services of Sri Ismail Khan & 12 others Security Guards by M/s. Premier Vigilance & Security Pvt. Ltd., and offering employment to fresh workmen in place of old and experienced workmen who were employed for more than 03 years with the said establishment i.e. NRIADD, Bhubabneswis legal and/or justified ?

vi) If not, what relief are the workmen of the second party Union are entitled to ?

5. Sri Ismile Khan has been examined as W.W.1 and filed the copy of letter of the management dated 11.12.2015 issued to the A.L.C (C), Bhubaneswar marked as Ext.1 in support of their claim advanced in the statement of claim. On the other hand, the management No. 2 has examined its Security In-charge as M.W.1 and filed documents such as copy of job contract agreement dated 1.5.2012, copy of the letter dated 2.5.2012 of M/s. Falcon Security Services, copy of agreement dated 1.12.2014 between the managements, copy of wages bill raised by M/s. Falcon Security Services, copy of letter dated 11.12.2015 of Director, management No. 2 to the ALC(C), Bhubaneswar, copy of letter dated 18.2.2016 addressed to the Ministry of Labour, Government of India along with postal receipt and copy of bye-law of the Central Council of the management No. 2 marked as Exts. A to H to refute the allegations raised in the statement of claim.

FINDING

6. Coming to the issue of maintainability of the reference against the management No. 2, it is not disputed that the disputants were engaged in the work of the said management i.e. the principal employer though it has been claimed by the management No. 2 that it is not an "industry" and it is an Institute for research of Ayurvedic Drugs, the M.W.1 being the Security Officer of the Institute admits that patients are making payment in their treatment. Keeping in view such admission and the principles set out by the Hon'ble Apex Court in the case of Bangalore Water Supply & Sewerage Board Vrs. A. Rajappa reported in AIR 1978 SC 548, it can be safely held that the management No. 2 is an "industry" and as such, provisions of the Act are applicable to the said Institute.

7. So far the issue of existence of relationship of employer and employee between the management No. 2 and the disputant workmen is concerned, it is the claim and contention of the second-party Union that the

disputants have been engaged for the work of the management No. 2 and they worked as per direction of the institute under their direct control and supervision as such, the disputants shall be held the employees of the management No. 2. But, as per the settled principles of the Hon'ble Supreme Court, the existence of relationship of employer and employee can be deduced from the facts (i) who has employed the workmen, (ii) who is paying the wages, if any and (iii) under whose direction and supervision and control they work. Mere working under supervision and control of a person is not sufficient to held that the said person is their employer. Such person having hired the labourers has undoubtedly some control and supervisory authority over such hired employees. But, the same is not sufficient to hold that the labourers/workmen are its employees. Coming to the case at hand, there is no controversy that the management No.2 was neither invited any application from the disputants for their appointment/engagement nor they were employed/engaged by it. The management No.1 being the outsourcing agency was the real employer of the disputants. They were receiving their wages from the said outsourcing agency while rendering service in the establishment of the management No. 2.

8. There is no pleading or evidence that the agreement between the parties was a sham and camouflage to avoid the liability of the employer and the disputants were the employees of the management No. 2. Be that as it may, doubt can ne entertained as to the maintainability of the reference as well as the statement of claim against the management No. 2. Further, the management No. 2 having no way connected or concerned with the employment and payment of wages to the disputants, cannot be also directly held liable for refusal of employment to the disputants with effect from 28.11.2015. Coming to the issue of violation of provisions of Section 25-F and 25-G of the Act, it is not seriously disputed by the management No. 2 that the disputant workmen are not presently engaged for any work in its establishment through the new out sourcing agency. It is also emerging from the pleadings and evidence of the parties that other contract labourers/Security Guards previously engaged through the management No. 1 are also presently working in the establishment of the management No. 2 through the new outsourcing agency. It is the claim and evidence of disputants that they were not given any retrenchment compensation or notice pay while disengaged by their previous employer i.e. management No. 1. Relying upon a certified copy of the decision of our Hon'ble High Court in OJC No. 965/2000 (Khageswar Samantaray and others Vrs. State of Odisha), argument has been advanced that so long the management No.2 requires services of the Security Guards, it cannot disengage the workers unless there is any definite allegation of negligence in duty and misconduct against any of them. But, it seems that the same direction is given by the Hon'ble High Court having certain inherent jurisdiction and this Tribunal has no such inherent jurisdiction. It has to act within four corners of the Act and the Central Rules. When it is held that there is no relationship of employer and employee between the management No. 2 and the disputant workmen and no appointment was given by the management No. 2, direction for reinstatement of the disputants with back wages and service benefits cannot be passed against the management No. 2.

9. Since there is sufficient evidence about the engagement of the disputants by the management No.1 for more than three years continuously and uninterruptedly, the said management No.1 is deemed to have violated the provisions of Section 25-F of the Act when it failed to give them notice or notice pay and retrenchment compensation before their disengagement. Admittedly there is no evidence to establish that the management No.1, contractor is having means and opportunity to engage the disputant workmen in other establishment for which it has any contract. That apart, the disputant workmen had worked under him for only three years on being engaged temporarily. Therefore, the disputants being workmen under the said management No.1, contractor and they being disengaged from service in violation of provision of Section 25-F of the Act, they are atleast entitled to a compensation of Rs.5,000/- (Rupees Five thousand only) each alongwith an amount equivalent to their one month's notice pay and retrenchment compensation for the period they worked under the said management No.1, contractor.

10. At the same time, it cannot be over sighted that the management No. 2 being the principal employer has an obligation or duty to see that when ever a new contract/agreement is being executed with the outsourcing agency for hiring of contract labourers or other workmen, it should see that the workmen engaged through an outgoing outsourcing agency shall get their legitimate entitlement as ensured by the Act unless their service/employment/engagement is being continued. Keeping in view the above liabilities and responsibilities of the principal employer, this Tribunal may not exceed to its jurisdiction by giving an instruction to the management No. 2 that the management should look into the possibility of reengagement of the disputant workmen in its establishment through the new outsourcing agency provided there is possibility of their re-engagement and if there is no definite allegations of negligence and misconduct against any of the disputants.

11. For the reasons and discussions made above, the statement of claim filed by the second party Union is not maintainable against the management No. 2 except the observation made above. The management No. 1 is to pay the amount as directed within three months of the Award being notified in the Gazette.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 544.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, सेंट्रल सेरीकल्चर रिसर्च एंड ट्रेनिंग इंस्टीट्यूट मैसूर बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सं. 77/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.07.2020 को प्राप्त हुए थे।

[सं. एल-42011/7/2007-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 544.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, the Central Government hereby publishes the award (Ref. No. 77/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Central Sericulture Research and Training Institute Mysore, Bangalore & Others, and their workmen which were received by the Central Government on 03.07.2020.

[No. L-42011/7/2007-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 77/2008

I Party	**II Party**
Sh. N. Mallikarjunan, S/o Sh. Nanjundappa Chetty, REC, Bidaraguppe, Anekal Taluk, Distt. Bangalore Rural.	The Director, Central Sericulture Research and Training Institute, Srirampura, Manandavadi Road, Mysore – 570008.

Appearance

Advocate for I Party : Mr. V. S. Naik

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42011/7/2007-IR(DU) dated 21.11.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Central Sericulture Research and Training Institute, Mysore in imposing the punishment of compulsory retirement from the services on Sh. N. Mallikarjunan, Ex. Lower Division Clerk, Research Extension Centre, Central Sericulture Research and Training Institute, Bidaraguppe w.e.f. 01.10.2005 is legal and justified? If not, to what relief the workman is entitled and from which date?"

1. The 1st Party is challenging the legality of the punishment imposed on him by the 2nd Party consequent upon the charges of misconduct came to be proved against him in a Departmental Enquiry.

In his Claim Statement he has stated that, while working as Lower Division Clerk at Bidaraguppe, he was kept under suspension by issuing a memorandum dated 10.06.2002, he denied the allegations; Enquiry Officer was appointed; subsequently, he was informed that Memorandum dated 09.09.2003 that the Charge sheet dated 10.06.2002 served on him is cancelled; vide Memorandum dated 18.11.2003, one more charge sheet was issued; he requested to drop the proceedings. However, enquiry was initiated by appointing Sh. M.S. Natarajamurthy as Enquiry Officer; he submitted the letter, protesting appointment of the Enquiry Officer. Entire proceedings held against him in pursuance of memorandum dated 18.11.2003 are without jurisdiction; since, he was issued Charge Sheet on the similar allegation vide Charge Sheet dated 10.06.2002. He had been kept in suspension as per Order dated 15.11.1995. The Memorandum dated 10.06.2002 issued and the punishment imposed on him by the Director, Central Sericulture Research and Training Institute, Mysore of the 2nd Party is without Authority, since, he is not the Disciplinary Authority of the 1st Party. The enquiry was held in violation of rules of natural justice and also against the mandatory requirement of rules. The Enquiry Officer held him guilty of charges and submitted his Report without proper appreciation of evidence. The Disciplinary Authority without discussing the defence put forth by him accepted the Enquiry findings. The Charge Sheet issued and the Punishment Order passed by the Director of the 2nd Party Management is without authority. Member Secretary is the Competent Authority to impose penalties and rules for the cadre of Lower Division Clerk and Chairman will be the Appellate Authority (as per the resolution of the Board in its 79th meeting held on 30.06.1990). Hence, Disciplinary proceedings initiated by Director by issuing Memorandum dated 10.06.2002 is without jurisdiction. This position is covered by the Judgment of Hon'ble High Court of Karnataka in WP 46579/2003 (S-Res) DD 05.01.2007.

2. The claim is contested. The contentions raised against the propriety of the 'Director, Central Sericulture Research and Training Institute, Mysore' in issuing Charge Sheet and imposing punishment and so also the eligibility of Enquiry Officer to hold enquiry are all denied and the Punishment Order is sought to be justified. It is further stated that, the Director, Central Sericulture Research and Training Institute, Mysore initiated the disciplinary proceedings in his capacity as Disciplinary Authority and also imposed the punishment. The Punishment Order is confirmed by the Member Secretary Central Silk Board and the Director CSR & TI was well within his delegated powers in initiating the action and imposing the major penalty.

3. On the basis of the rival pleadings, touching the fairness of enquiry, a Preliminary Issue regarding the fairness and correctness of Domestic Enquiry was framed, tried and adjudicated by holding

"... Domestic Enquiry is conducted by the Competent Enquiry Officer against the 1st Party workman by providing him sufficient opportunity in a fair and proper manner."

4. The workman has adduced evidence that, he served as LDC in the 2nd Party for 16 years without any blemish - subsequent to his compulsory retirement, he is not employed.

5. Both have submitted their respective arguments. Written argument along with authorities is also submitted by the 1st Party.

6. The allegation against the workman vide Memorandum dated 18.11.2003 was,

Firstly, while working as LDC at Bidaraguppe till his suspension, he was late in attending for duty, negligent and highly irregular in maintaining cash book of the Centre – failed to comply with the instructions of the superiors – causing serious dislocation of administrative and technical activities of the Centre.

Secondly, during the above period, he did not deposit the cash receipts on the next working day to the office working day on several occasions deliberately with malafide intention for misappropriating Government money for 4 to 141 days for his personal gains.

Thirdly, during the above period he misused the Office Letter-Head and Seal of the Centre by making fake documents to obtain loan of Rs. 30,000/- from Syndicate Bank. He also made his fake salary certificate and fake wage slip for surety i.e., Sh. Gangadhar, TSFW of the Centre.

Fourthly, while functioning as LDC at Regional Sericultural Research Station, Central Silk Board, Kodathi between 01.02.1994 to 09.04.2001, he surrendered the documents pertaining to the Office Jeep No. CNA-2092 to the RTO but failed to obtain an acknowledgement by paying Rs. 100/- for cancellation of license for the said vehicle. Due to his negligence RTO imposed the penalty of Rs. 27,065/- towards the belated deposit of Road Tax and sustained the loss of Rs. 27,065/-.

The Articles of charge was accompanied with detailed imputation of misconduct. The 1st Party denied the charges that he is not reinstated into service back after his suspension and arrears of pay is not paid so far, though the Charge Sheet is withdrawn and cancelled–initiation of the second enquiry on the same ground cannot be sustained when the first one is withdrawn and treated as cancelled – abnormal delay is caused in completion of Enquiry proceedings.

7. During the enquiry, he had the benefit of assistance from his Defence Assistant. Six witnesses were examined for the prosecution. Six witnesses were examined for the defence and the DGO was the seventh witness. 38 documents were marked for the prosecution and 11 documents for the defence.

8. Written brief and counter reply were submitted. Enquiry Officer found *"... all the four charges levelled against the CSO are proved...."*

9. The 1st Party at the first instance had attacked adjudicating the eligibility of the Enquiry Officer on the ground that under Rule 14 of C.C.S (C.C.A) Rules, Enquiry Officer should not be more than 70 years of age as on the year of his empanelment - Since, the Enquiry Officer has completed 70 years as on 31.12.1999, his empanelment and appointment as Enquiry officer to hold Enquiry is vitiated. While adjudicating the Preliminary Issue said contention is rejected and the enquiry conducted by him is endorsed. Now we left with another technical objection raised by him about the propriety of the Director of the 2nd Party in initiating the Domestic Enquiry and imposing the Punishment in the capacity of Disciplinary Authority.

10. Similar question was dealt by the Hon'ble High Court in WP 46579/2003 (S-Res) DD 05.01.2007 in the matter pertaining to Senior Field Assistant of the 2nd Party. The Hon'ble High Court in its writ jurisdiction struck off the Punishment Order which was passed by the Director on the ground that he is lower in rank than that of the Secretary of the Appellate Board; hence, he was an incompetent Authority. The 2nd Party preferred appeal over the said Order for not giving liberty to redo the matter in accordance with Law. The Appeal was allowed and the 2nd Party was permitted to exercise liberty to represent before the Disciplinary Authority to pass appropriate Orders. Aggrieved employee took the matter further in special leave petition before the Apex Court; the special leave petition was dismissed with the observation :

> *"... the application of Article 311 of constitution to the employees of CENTRAL SILK BOARD is expressly kept open. So far as the Respondent (individual employee) is concerned we are not interfering with the impugned Order. Thus, the judgement of the Hon'ble High Court in WP 46579/2003 (S-Res) DD 05.01.2007 did not settle any question of Law."*

11. Yet in another Judgement WP 15048/2017 (S-CAT) DD 31.05.2019 in the matter of Sh. M. Muniyappa vs. Union of India and others, very same question of Law was raised about competency of the Director in imposing the punishment on an employee/Attender of the 2nd Party. The Department had taken the contention that, the Board in the resolution dated 04.05.2002 delegated the disciplinary powers of the Member Secretary of the Board to the Director. In the back drop of the rival contentions the Hon'ble High Court perused the minutes of the 111th meeting of the Central Silk Board held on 04.05.2002 at Bangalore. It was noticed that item No. 5 pertains to consideration of the proposal for delegation of administrative, financial and disciplinary powers to the Officers of the Board. The Hon'ble High Court expressed that,

> *".... We do not find any discussion regarding need for delegation of disciplinary powers and no specific resolutions regarding delegation of disciplinary powers from the Member Secretary to the Director is forthcoming."*

The Writ Petition was partly allowed. The Order impugned therein passed by the Director, Central Silk Board and the Order of the Appellate Authority/Chairman Central Silk Board and the Order passed by the Central Administrative Tribunal were quashed and set aside and the Competent Authority was directed to reconsider the reply submitted by the employee to the 2nd show cause notice and pass orders in accordance with Law.

12. Sh. VSN for the 1st Party has placed the information obtained by the 1st Party under RTI Act dated 12.02.2020, from the 2nd Party. Accordingly, powers are delegated to the Member Secretary, Central Silk Board vide decision at 66th Board Meeting of the Board of Directors held on 28.04.1986 at New Delhi - The Member Secretary is the appointing Authority "*Senior Research Authority/Asst. Director/Asst. Secretaries/ Account Officers and all other post having similar scale of pay excluding all other post mentioned at Sl. No. 1 therein and competent to impose penalties and Chairman is the Appellate Authority*".

Despite knowing the challenge by the 1st Party to the competency of the Director in issuing show cause notice, initiating enquiry and imposing punishment, the 2nd Party has not addressed the same. They have not shown the material under which the disciplinary powers of the Secretary was delegated to Director, like to issue show cause notice, hold enquiry and impose punishment. The whole exercise is nothing but void, spending public money, public time without purpose.

That leads me to hold that, "the action of the Management of Central Sericulture Research and Training Institute, Mysore in imposing the punishment of compulsory retirement form services on Sh. Mallikarjunan, Ex. Lower Division Clerk, Research Extension Centre, Central Sericulture Research And Training Institute, Bidaraguppe w.e.f 01.10.2005 is not legal and not justified."

13. Next comes the question of relief that may be awarded in favour of the 1st Party workman consequent upon the finding as above to the referred issue. Now, he has crossed the age of superannuation. Since the whole action commencing from issue of show cause notice is vitiated and he has already superannuated there cannot be any liberty to the 2nd Party to revisit the disciplinary action on the same set of allegation. He should be monetarily compensated in respect of the service lost due to the illegal punishment imposed on him. He has stated that, he was kept under suspension in the year 1995 and without revoking the said suspension, he was further alleged to have committed during the course of his duty. The 2nd Party has not addressed this contention also. However, within the limited perimeter of the referred issue, ends of justice will be met by directing the 2nd Party to treat the workman as on continuous duty upto his superannuation and pay back wages at 80%.

AWARD

The reference is accepted.

The action of the Management of Central Sericulture Research And Training Institute, Mysore in imposing the punishment of compulsory retirement form services on Sh. Mallikarjunan, Ex. Lower Division Clerk Research extension, Central Sericulture Research And Training Institute, Bidaraguppe w.e.f 01.10.2005 is not legal and not justified.

The 2nd Party is directed to treat the workman as on continuous duty without any break upto the date of his superannuation and pay 80% of the back wages to him within 60 days from the date of publication of Award, lest, the amount shall carry 6% interest per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 24th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 545.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षक, डाक विभाग, उडुपी, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 20/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.07.2020 को प्राप्त हुए थे ।

[सं. एल-40012/25/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintedent, Department of Post, Udupi, Bangalore & Others, and their workmen which were received by the Central Government on 03.07.2020.

[No. L-40012/25/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 20/2013

I Party	**II Party**
Sh. A Shekar Devadiga, S/o Muthu Devadiga, R/o Asod BO, A/w Koteshwar, SO-Kundapura Taluk, Udupi - 576222	The Superintedent, Department of Post, Udupi Division, Post Office, Udupi - 576101.

Appearance

Advocate for I Party : Mr. H. K. Mallya

Advocate for II Party : Mr. Prasad Kumar Rai P.

AWARD

The Central Government vide Order No. L-40012/25/2013-IR(DU) dated 26.04.2013 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management i.e. Supdt. of Post Offices, Udupi Division, Udupi in terminating the services of Sh. A Shekar Devadiga w.e.f. 01.12.2010 is legal and justified? To what relief Sh. Shekar Devadiga is entitled to?"**

1. The 1st party workman herein claims that he was engaged to work as Group D in the leave vacancy from 25.04.2009 at Koteshwar Post Office under Kundapur Head Office at Udupi w.e.f. 01.07.2009 on the retirement of a regular incumbent; his service was abruptly terminated on 30.11.2010 without any notice or notice pay, he has served continuously for 19 months without any break. Firstly, he was engaged as an outsider in the leave vacancy and thereafter on retirement of the concerned official on 30.06.2009 he continued in the said appointment, by the orders in the Order Book of the Sub Post Master, Koteshwara. On the transfer of one Group-D employee to the post 1st Party was serving, he is terminated from service. The CPMG, Bangalore vide Circular No. STA/2-3/253/Gr-D/11 dated 12.03.2007 issued instruction regarding recruitment to the cadre of Group D Category. Accordingly, 75% have to be filled by GDS of recruiting units failing which GDS of neighbouring units on the basis of the seniority cum fitness. For the remaining 25% of post the selection is as below:

a) By absorption of Temporary Status casual labourers failing which

b) By absorption of T/S casual labourers of neighbouring Divisions / U Divisions / units

c) By full time casual labourers of recruiting unit failing which,

d) ....

2. 1st Party's case falls under item (c) and has to be considered. As per the DG P&T OM No. 269/130/78-STN Dated 01.10.1984 and No. 45/58/84-SPB.1 dated 12.02.1985, such of the casual mazdoors/ casual labourers who have served in the department for at least total period of 240 days in a year and whose continued engagement is not considered necessary, shall be served a notice of one month before terminating their services or one month wages in view thereof. But in his case said OM is not followed. The action of the 2nd party in non-considering him for regular appointment in the Group D cadre or in the alternative for appointment in any GDS post is not legal.

3. In his additional statement 1st Party further claimed that, he has signed the attendance register between 25.04.2009 to 20.07.2010 on all the working days and has worked as Group D Official. Thereafter he was instructed not to sign in the attendance register, the Post Master obtained his signature on some blank charge reports without any dates, no substitute was appointed or engaged on 27.09.2009, 28.09.2009, 27.12.2009, 28.12.2009, 28.03.2010, 20.06.2010 and 19.09.2010 or on any other days between 25.04.2009 to 30.11.2010.

4. The case is countered by the 2nd party on following lines: he was engaged as an outsider to work as substitute in the vacant post of Group D at Koteshwara Sub Post Office in different spells between 24.09.2009 to 30.11.2010. He was not engaged 'in continuation' in the post which had fallen vacant as a consequence of vacancy arising in the Post Office; he was only engaged on temporary basis to work as a substitute in the leave vacancy till regular selection / arrangement was made to the vacant post as per Rules. He was not appointed in any capacity in the Department and there is no termination, notice is not required to be given to him; the Postal Department has not kept documents in respect of outsiders engaged as substitute for leave vacancy / vacant post purely on temporary basis. Outsiders so engaged cannot claim confirmation in service; he was only engaged as a leave substitute Group D as and when required and his wage / pay was paid on the actual number of days he has worked as leave substitute. He is not paid monthly lump sum salary. One Mahabala Devadiga working as Group D at Byndoor, had applied for transfer from Byndoor Post Office to Koteshwara Post office and his request for transfer was considered and was transferred to the post of Group D, Koteswhara, hence on his assuming charge, 1st party's service working as substitute was no longer required, there was no question of abrupt termination since he was not appointment on any capacity on regular basis after due process. The circular relied by the 1st Party is not applicable since it pertains to cases of fresh recruitment to the cadre of Group-D; in this case fresh recruitment is not made and the vacant post is filled by transfer; his case does not fit in any of the category mentioned in the PMG's Circular, he was not a casual labourer either full time or part time nor a contingent worker in the Department. When a suitable candidate is available through transfer process of the officials, there is no need for the Department to go for fresh recruitment hence the question of selection under category (c) of the circular does not arise.

5. It is further stated by the 2nd party that 1st Party had filed OA No. 90/2012 before Central Administrative Tribunal, Bangalore seeking same relief and his petition is dismissed on the ground that he is not a regular appointee, which means that the engagement automatically ceases as regular selection was made as per Rules. It is also observed that "his appointment at best was a contract appointment coming under Sec 25 of Industrial Dispute Act." He is not engaged continuously for more than 240 days and he is not a casual mazdoor / casual labourer; the circular quoted by him is not applicable to his case, and no notice was required to be given to him. He has to attempt for the post only through regular selection process.

6. Both parties have adduced evidence reiterating their respective claim and counter and submitted their oral / written arguments.

Documents produced by the workman are marked as Ex W-1 to Ex W-16. 3 documents produced by the 2nd party are taken on record as Ex W-18 to Ex W-20.

7. The 1st party workman is examined as WW-1 and the Superintendent of Post Offices, Udupi is examined as MW-1.

During the cross examination, 1st party admits that he had not applied for the job and was not given appointment order – as a Stop Gap arrangement he was engaged to work, since Grade D Employee had gone on leave for one month. He was not interviewed and no process was complied for his engagement – OA No. 90/2012 filed by him before Central Administrative Tribunal, Bangalore Wing, Bangalore is dismissed vide order dated 17.02.2012 / Ex W-13.

The tone of cross examination to MW-1 was that the workman had served continuously for 19 months without break from 25.04.2009 to 30.11.2010.

8. Admittedly the 1st Party chose the platform of Central Administrative Tribunal for redressal of his grievance. The relief sought in his petition in OA No. 90/2012 was for providing alternative appointment in Group D cadre, in the alternative for any GDS Post. The petition is dismissed vide order dated 17.02.2012 / Ex W-13 with the observation that "*his appointment at best was a contract appointment coming under Sec 25 of Industrial Dispute Act. Therefore it can be terminated* (termed ?) *as termination of the contract. Nothing remains in the matter…..*" Thus, the prayer sought by him in his claim statement "..to direct the 2nd party to consider the case of the 1st party for providing alternative employment in Group D cadre or in the alternative of any GDS post.." is already adjudicated by Central Administrative Tribunal and that part of the Industrial Dispute is hit by the principles of Resjudicata.

9. He is very well aware that his engagement was a Stop Gap arrangement and on filling up of the vacancy by transfer he is relieved from service. There is no material to hold that he was engaged as a full-time casual labourer, thus category (c) of the Circular dated 12.03.2007 will not subscribe to his dispute. Thus, the Tribunal is left with a short question whether he had worked with the 2nd party between 25.04.2009 to 30.11.2010 continuously, if so his termination without prior notice / notice pay amounts to illegal retrenchment.

10. 2nd party does not dispute the allegation that he has worked between 25.04.2009 to 30.11.2010 but dispute the claim that he has worked continuously in the above period. According to them he was engaged on different spells as follows :

Outsider engaged period	Break on
01.07.09 to 26.09.2009	27.09.09 to 28.09.09
29.09.09 to 26.12.2009	27.12.09 to 28.12.09
29.12.09 to 27.03.2010	28.03.2010
29.03.10 to 19.06.2010	20.06.2010
21.06.10 to 18.09.2010	19.09.2010
20.09.10 to 30.11.2010	

It is noticed that 27.09.2009, 27.12.2009, 28.03.2010, 20.06.2010 and 19.09.2010 were all Sundays. It is brought out during cross examination of MW-1 that there was no alternate arrangement on the break dates. The extract of the Attendance Register would reflect the signature of an employee in the name A Shekar D commencing from 25.04.2009 he has been working on all the working days, that coincides with the case of the 1st party workman, he has been working with the 2nd party from 25.04.2009 itself. Though 2nd party contend that he is engaged to work for 90 days only during difference spells of time, the table of such engagement produced by them as above would indicate that he was working continuously for more than 240 days prior to 01.12.2010. Having not produced any such contract entered with the 1st party workman for his engagement for a limited period of 90 days, the only possible inference is, service rendered by him with the 2nd party was a continuous service as defined by Sec 25-B of 'the Act', artificial breaks were brought by the 2nd party in his service w.e.f 01.07.2009. They have produced 6 Charge Reports dated 26.09.2009, 26.12.2012, 27.03.2010, 19.06.2010, 18.09.2010 and 01.12.2010. But these documents would not substantiate their case that each of his engagement was for a limited period. In all possibility these documents were generated to get rid of any statutory obligation arising out of his engagement for a continuous period. I am convinced that the 1st party workman has worked continuously with the 2nd party until he was relieved on 01.12.2010 forenoon.

11. Admittedly, no prior notice of termination was given to him. The office order that the workman was engaged for intermittent period is not produced by the 2nd party, definitely his disengagement w.e.f. 02.12.2010 amounts to Retrenchment as defined by Sec 2(oo) of 'the Act' not hit by sub sec (bb) of Sec 2(oo) of 'the Act'. Had if the 2nd party shown that there was a valid contract of employment between the parties and on the expiry of contract or termination of the contract, he was terminated from service, then it was not obliged to follow the mandatory procedure contemplated by Sec 25-F of 'the Act' either by giving one-month notice / notice pay and the retrenchment compensation contemplated by Sec 25-F (b) of 'the Act' in respect of the period of his service between 25.04.2009 to 30.11.2010. Hence, his abrupt termination after extracting continuous service from 25.04.2009 to 01.12.2010 is illegal.

12. As per the discussions made supra, the workman is entitled only for the monetary compensation as per the calculation provided in Sec 25-F of 'the Act' along with interest at 6% per annum till the date of payment.

AWARD

The Reference is accepted.

The action of the Management i.e. Supdt. of Post Offices, Udupi Division, Udupi in terminating the services of Sh. A Shekar Devadiga w.e.f. 01.12.2010 is not legal.

The 2nd party is directed to pay the 1st Party workman notice pay at the rate of his last drawn one month wage and retrenchment compensation for the period of his service between 25.04.2009 to 30.11.2010 with future interest at 6% per annum within 60 days of publication of this Award.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 24th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 546.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स वरिष्ठ डाक अधीक्षक, रोहतक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 18/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.05.2020 को प्राप्त हुए थे।

[सं. एल-40012/10/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2018) of the Central Government Industrial Tribunal-cum Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Senior Superintendent of Post Office, Rohtak & Others, and their workmen which were received by the Central Government on 20.05.2020.

[No. L-40012/10/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 18/2016
Registered No.16.06.2016

Sh. Ram Niwas S/o Mahipal Singh, R/o Vill-Neola, Po-Tumba Heri,
Teh-Jhajjar Jhajjar (Haryana) ...Workman

Versus

The Senior Superintendent of Post Office, Department of Post,
Rohtak Division, Rohtak-124001 ...Management

Central Government vide Notification No.L-40012/10/2016-IR (DU) Dated 03/06/2016, under clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

AWARD

Passed On-04.03.2020

"Whether the action of the management of Senior Superintendent, Post Offices, Rohtak Division, Rohtak in termination the services of the workman SH. Ram Niwas S/o Sh. Mahipal Singh, GDS Mail Deliverer and Carrier w.e.f. 26.08.2013 is legal and justified? If not, what relief the workman is entitled to and from which date?"

1. Notice is issued to the parties for submission of claim statement as well as written statement, workman Ram Niwas made his presence through Mr. R.P. Mehra, AR for workman while Sh. V.K. Arya, AR of the management. Perusal of file reveals that in spite of making presence on 20.09.2016 workman did not file its claim statement up to 07.02.2020, forcing this Tribunal to close the opportunity of filing claim statement, resulting this case as case of no evidence.

2. Learned AR of the management V. K. Arya stated that it is not possible for him to file written statement in absence of claim statement and award be passed as no claim award.

3. Perusal of zimini orders reveals that more than 50 opportunities have given to the workman to file its claim statement but workman as well as his learned AR misused the opportunities given by the Tribunal for submission of claim statement, which shows that the workman is not interested in adjudication of the case on merit as such, this Tribunal is left with no choice, except to pass a 'No Dispute Award/No Claim Award'. It is also clarified that passing of the no dispute award/no claim award would not bar the workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim.

4. Let copy of this award be sent to the Appropriate Government as required under Section 17(2) of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 3 जुलाई, 2020

का.आ. 547.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक (पी), भारत अर्थ मूवर्स लिमिटेड, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 50/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.05.2020 को प्राप्त हुए थे।

[सं. एल-42012/13/2008-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 3rd July, 2020

S. O. 547.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager (P), Bharat Earth Movers Ltd., Bangalore & Others, and their workmen which were received by the Central Government on 20.05.2020.

[No. L-42012/13/2008-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 16TH MARCH 2020

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 50/2008

I Party	**II Party**
Sh. S. Krupanidhi, S/o Sh. Sathyanarayana, No. 29, Anjanadri, 19th Cross, Kaggadasapura, C.V. Raman Nagar Post, Bangalore - 560 093.	The General Manager (P), Bharat Earth Movers Ltd., Bangalore Complex, New Thippasandra, Bangalore - 560 075.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. N.S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42012/13/2008-IR(DU) dated 02.06.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Bhart Earth Movers Ltd., Bangalore in terminating the services of their workman Sh. S. Krupanidhi w.e.f. 13.07.2007, is legal and justified? If not, to what relief the workman is entitled to?"

1. The 1st Party workman is the former employee of the 2nd Party who is terminated from service on the allegation of habitual absenteeism between the periods February 2005 to May 2006, intermittently for 226 days. Before imposing punishment, the 2nd Party issued Charge Sheet and ordered Departmental Enquiry to probe into the charges. The Enquiry Officer after holding the enquiry submitted his report holding that 1st Party is guilty of charges of misconduct as per Clause 21.20 of the Companies Standing Order.

2. In his claim statement the workman challenged the procedure of enquiry, alleged lack of reasonable opportunity for him to defend against the charges, questioned correctness of the findings of the Enquiry Report and claims discrimination is exhibited by the Disciplinary Authority in punishing him by letting others scot free who were also alleged of similar misconduct. He contends that because of his Trade Union activity, he is victimized and imposed punishment which is highly disproportionate; he pleads for reinstatement, since he is unemployed.

3. The 2nd Party refuted all his allegations and justified the action taken against him.

4. In view of the rival pleadings about the procedure of enquiry a Preliminary Issue was framed, tried and adjudicated by upholding the fairness of the Domestic Enquiry.

5. The workman adduced evidence about his unemployment.

6. As per the records, Charge Sheet was issued detailing the dates of his absence for the period February 2005 to May 2006 intermittently for 226 days. The provisions of clause 21.20 was quoted which misconduct is punishable under clause 22 of the Standing Orders of the Company. In his reply, the 1st Party responded that, even after 6 years of his marriage his wife did not conceive, that put him under mental agony; as per the advice of the elders he had to perform religious rites which went on for days together and he was involved in renovation of an old temple near Hosur. However, he further stated that now he has realised and come to grips and started attending duty regularly and working to the satisfaction of the Department Head.

7. During the enquiry one of the Officials who is looking after the attendance of the employees was the sole witness for the Management and stated that, the CSE has not submitted leave letter or Medical Certificate for the above period. The CSE did not dispute the above statement.

1st Party in his statement admitted his absence as a mistake and pleaded for an opportunity to rectify himself.

8. In view of the above there was nothing much left ponder for the Enquiry Officer, except to hold him guilty of the charges of misconduct under Clause 21.20 of the Companies Standing Order.

9. In his response to the Enquiry Report submitted to the Disciplinary Authority, he again sought for an opportunity to rectify himself, he requested to pardon him. Acting on the Enquiry Report, the Disciplinary Authority proposed the punishment of *removal from service which does not disqualify for future employment*, in the said proposal it was noticed that he was absent for 131 days during May 2006 to January 2007.

10. The workman in response to the above proposal reiterated his woes; he did not dispute that subsequently also he remained absent for 131 days between May 2006 to January 2007.

11. The Disciplinary Authority noticed that, the employee did not adduce any evidence justifying his absence and there was no material to excuse him for the absence period covered in the Charge Sheet, thus proceeded to confirm the proposed punishment. The Disciplinary Authority also observed that the opportunity given all these years and patience shown by the Management has not yielded the desired result and attitudinal changes in him; he remained absence without leave or permission for a period 131 days during May 2006 to January 2007 (after the issuance of the present charge sheet)

12. Sh. MD for the 1st Party submits that the allegation is of unauthorised absence and habitual absenteeism. The management at no point of time issued a call memo to him on his unauthorised absence. Though the charges were proved against him, considering his pitiable condition he may be reinstated into service.

13. In reply Sh. NSN would submit that he was holding a responsible position of Welder and his unauthorised absence has caused dislocation of work; he was given ample opportunity to rectify himself which he did not avail. He is not dismissed from service but only removed from service without any disqualification for future employment.

14. The 1st Party during his cross examination before this Tribunal has stated that, to his experience of 7 years of services with the 2nd Party, he would have got similar job outside, hoping for reinstatement in the 2nd Party he did not make effort to secure job outside.

15. It appears that though the workman was absenting intermittently, subsequent to May 2005 no steps appears to have been taken by the 2nd Party against him. If at all the workman was given any cause notice, warning memo or call notice, definitely same would have been placed before the Enquiry Officer. The explanation given by the workman to the Charge Sheet and also to the proposal of punishment indicates that for the above period he was under stress, since he did not beget issues. Same could not be a legal and valid ground for him to remain unauthorisedly absent. What is note worthy from his explanation dated 25.10.2006 to the Charge sheet is his statement before the Enquiry Officer on 06.01.2007 and also his further response dated 16.06.2007 to the proposed punishment, he maintained that he is attending the duty regularly and is performing his duties, he pleaded for an opportunity to rectify himself. He did not make cock and bull story to fit into the frame of defuse against the charges.

16. It is also noticed from the case records that the reference order was received in the office on 09.06.2008 and was placed before the Presenting Officer on 08.02.2010, the notice was issued to him and he appeared with his claim statement on 10.03.2011 with the excuse that the notice was not served on him. The counter statement was filed on 03.05.2012. Much of the hearings are spent without any progress.

17. Though no illegality can be traced in the action taken by the Disciplinary Authority, to record a finding on justifiability of the action, it requires further consideration of the attending circumstances. As per his fair submission he was distracted for not be-getting a child and had undertaken that he would be punctual henceforth. He has not made effort for a job outside anticipating the results of this reference. Sec 11-A of 'the Act' bestows jurisdiction on this Tribunal to set aside the punishment order of discharge / dismissal if it is satisfied that the punishment order is not justified. While 'legality' would mean something allowed by the law (as per Cambridge Dictionary) 'justifiable' action would sound that there is a good reason for it. The good reason for this Tribunal to intervene is, no timely action was taken against the workman immediately after he remained unauthorisedly absent and the workman during the period in question was stressed (in his own words). It appears except the misconduct for the period under consideration, there is no allegation of moral turpitude against him that would impress upon this Tribunal to hold that the action of the 2nd Party in imposing the punishment of removal from service was harsh and excessive, hence not justified. Being out of service for 13 long years, he has paid suitably for his misconduct, hence reinstatement into service without back wages is the appropriate award for him.

AWARD

The reference is accepted.

The action of the Management of Bharat Earth Movers Ltd., Bangalore in terminating the services of the workman Sh. S. Krupanidhi w.e.f. 13.07.2007 is not justified.

2nd Party is directed to reinstate 1st Party workman without back wages with continuity of service to his original post within 60 days of publication of the Award in the Official Gazette.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 16th March, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 548.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हुट्टी गोल्ड माइन्स कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 548.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 26/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Hutti Gold Mines Co. Limited and their workmen, received by the Central Government on 06.07.2020.

[No. Z-16025/4/2020 -IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH APRIL, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 26/2015

I Party

Sh. Shivakumar Math,
S/o Shekraiah Math,
R/at Sangameshwara Nilaya,
N.G.O Colony, Gulbarga Road,
Lingasugur Taluk,
Lingasugur,
District Raichur - 584115.

II Party

1. The Managing Director (AA),
Hutti Gold Mines Co. Ltd.,
Lingasugur,
District Raichur – 584115.

2. The Chief Manager
(Samanvaya),
Hutti Gold Mines Co. Ltd.,
Lingasugur,
District Raichur – 584115.

Appearance

Advocate for I Party : Mr. N. M. Handral

Advocate for II Party : Mr. M. R.C. Ravi

AWARD

1. It is a petition filed under Section 10 R/w Section 2-A of the Industrial Disputes (Amendment Act 2010) Act, 1947 (for Brevity 'the Act' herein after).

2. The Petitioner is the former employee of the Hutti Gold Mines Company Ltd., / 2nd Party who was dismissed from service as a measure of punishment on certain charges came to be proved against him in a Departmental enquiry.

He claims that, he is a Trade Union activist and looked after the protection and interest of the workers, before the Industrial Tribunal, High Courts etc. The 2nd Party with a vindictive mind saw that a criminal case is registered against him and 15 other workers at Lingasugur Police Station. The Police Charge Sheeted him along with 14 others. The 2nd party decided to take other workers on duty barring one Channabasava and himself; they initiated Domestic Enquiry also. The Enquiry Officer submitted his Report; acting on the same the 2nd Party dismissed him from service; the Enquiry Report is unfair and not based on documentary proof; it is arbitrary; the Dismissal Order is passed without application of mind in a mechanical way; his appeal was considered in a routine manner; he has been victimised and discriminated from 14 co-employees who were taken back into service; he is not gainfully employed hence, for direction for reinstatement with continuity of service and consequent benefits.

3. The claim is contested by the 2nd Party, the allegations levelled regarding discrimination, victimisation etc., are denied and the punishment Order is sought to be justified.

4. The Domestic Enquiry conducted against the 1st Party workman is upheld vide order dated 30.05.2019.

5. The 1st Party workman has adduced evidence regarding his unemployment and also corroborating his allegation of discrimination and victimisation and he is cross examined contradicting his affidavit evidence.

6. Heard both Learned Counsels.

7. The allegation against the workman in the charge sheet dated 30.10.2013 was to the effect,

that on 26.10.2013 one employee namely Sh. Amarappa who was working in the second shift in the Mines suffered chest pain; he was admitted to the Hospital of the 2nd Party at 9:00 pm; despite treatment by the Doctors and Staff on duty he expired; his family members were about to shift the dead body, at that time, CSE along with co-employees and others with malafide intension to encash the situation for personal benefit, assaulted the doctors and staff, stopped the family members from shifting the body incited the mob which has assembled there, intimidated the Doctors and staff, abused them filthily, assaulted them with I.V stand rod and B.P Operators and also inflicted blows, put threat to their lives and vowed to burn them, damaged the equipments, furnitures, the window and door shutters of the Doctor's room thus, damaged the property of the Hospital; the Doctor suffered injury to his forehead. Despite request by the Superior Officers and the elected members of the Trade Unions and also the Police Officers, he continued to incite the mob and also committed rioting.

Due to the above incident the Doctors and staff could not perform their duty and treat the patients. They were forcibly confined in a room under threat to their life upto 4:00 am. Thereby, he committed misconduct under Clause 19 (7), 19(9), 19(13), 19(16), 19(17), 19(19), 19(35), 19(39), 19(47) and 19(49) of the Standing Orders.

8. During the enquiry, 14 witnesses were examined for the 2nd Party and two witnesses for the CSE.

MW-1 was the Senior Security Inspector who was on shift duty on the night on 26.10.2013, he is the direct eye witness to the alleged incident.

MW-2 is Security Personnel who was on duty; he is also the direct witness to the alleged incident.

MW-3 is the Security Officer, who arrived at the spot on getting information about the rioting in the Hospital.

MW-4 is the Security Personnel, he is another direct eye witness to the alleged incident but he did not corroborate the Charge Sheet allegation against the CSE.

MW-5 is the Junior Security Officer who arrived at the spot on receiving information over phone about the indisposition of Sh. Amarappa. He is also another eye witness to the alleged incident.

MW-6 was Junior Security Inspector who was on Shift in charge on night. He went to the Hospital on getting information that one of the workmen is admitted to the Hospital. He is also a direct eye witness to the alleged incident.

MW-7 is the Junior Security Officer; he has rushed to the Hospital along with other Security Officers, on getting the information that one of the workers suffered giddiness. He is also a direct eye witness to the alleged incident.

MW-8 is the Hawaldhar of the security division who was deputed to the Hospital on the death of the workman Sh. Amarappa. He is also a direct eye witness to the alleged incident.

MW-9 is a Security Personnel who did not support the Charge Sheet allegations against the CSE.

MW-10 and MW-11 / the Security Personnels followed the suit of the MW9.

MW-12 was the Doctor who was called to the Hospital to treat Sh. Amarappa; on his admission. By the time he reached the Hospital the doctor on duty had put him on ventilator; his pulse and BP was not recording; after making attempt for 10 to 15 min, they declared him dead. However, he did not depose about the presence of the CSE at the relevant time in the Hospital.

MW-13 was staff nurse on the shift duty.

MW-14 was another Security Personnel who did not corroborate the allegations against the CSE.

9. After the closure of the prosecution evidence, the 1st Party gave his statement. His case was, on getting the call from Sh. Channabasava (Petitioner of ID 25/2015) he went to the spot; by that time, the crowd gathered there was shouting that the Doctors did not treat Sh. Amarappa properly; they were trying to barge into the Doctor's room. On enquiry he came to know that the 2nd Party delayed to send the ambulance after Sh. Amarappa was taken out of the Mines; even after bringing him to Hospital, Doctor on duty was not there; he along with Sh. Channabasava attempted to prevent the crowd but could not. Unable to control the mob, he came out of the casuality. The Managing Director called him over phone and told him to control the galata for which he replied that, he has come over there only to see the matter. The Security Officer also called him over phone to control the situation; by that time, the miscreants indulged in damaging the property of the Hospital and started pelting stone etc; at the instance of the Sub-Inspector of Police he drafted a complaint with

signatures of some of the workers; by 12:00 in the mid night some trade Union leaders arrived there; the angry mob shouted at them; he briefed the matter to trade Union leaders and those leaders left the spot for half an hour and Sh. Amir Ali labour leader submitted a written complaint to Police; since, the employees insisted to read the compliant said complaint was read to the crowd; it was mentioned in the complaint that, Sh. Amarappa died because of heart failure, on that the mob was enraged and entered into confrontation with Amir Ali, insisted him to withdraw the complaint. At their instance he (1st Party) submitted the written complaint drafted by him earlier to the PSI. But the PSI on verification of the complaint told him to lodge a better complaint in the Police Station. Accordingly, along with a co-employee he accompanied the PSI and lodged the complaint and returned to the spot. But the galata was ensuing. The Managing Director arrived at the spot at 4:00 am. On request by the mob he pleaded with the Managing Director to set right the system in the Hospital; the mob started shouting and told him to obtain an undertaking from the Managing Director. Accordingly the Managing Director gave a letter in writing; he read over the same to the persons present over there and handed over to the father of the deceased; thereafter, arrangement was made to shift the dead body and the mob disbursed.

He was cross examined at length. He examined two of his co-employees as his witnesses and had produced a video clipping in support of his contention. In his Enquiry Report the Enquiry Officer observed that said video pertains to few minutes of the casuality whereas the rioting was occurred inside the casuality room and it does not pertain to the incident of assault on the doctor and the staff. The damages caused to the property of the Hospital is not recorded. Relaying on the evidence of MW-1 to MW-8, the Enquiry Officer recorded the finding of guilt on all the charges alleged against him. The CSE submitted his remarks to the Enquiry Report; he mentioned that 16 workmen are Charge Sheeted by jurisdictional Police on complaint lodged by the Management. Out of them, Domestic Enquiry of 14 was concluded and they were reinstated. But himself and Sh. Channabasava (Petitioner of ID No. 25/2015) were not taken to duty.

The Disciplinary Authority / Chief Manager rather than re-appreciating the materials placed by the Enquiry Officer cited the incidents of 29.10.2013 and 15.11.2013 alleging that in the trade union congregations; he gave provocative speech against privatisation of company, published material alleging day light robbery in the company, he is indulged in making false allegations against Management and exploited the situation for his self-interest and proceeded by returning the order of dismissal.

The Appellate Authority reiterated the order of Disciplinary Authority and dismissed his appeal.

10. After the Preliminary Issue was answered in favour of Management upholding the fairness of Domestic Enquiry, the 1st Party workman gave his affidavit evidence stating that because of his lead in Trade Union activities to resolve the problems of the workers, he is victimised. Out of the sixteen against whom the complaint was lodged, barring himself and Sh. Channabasava (petitioner of ID No. 25/2015) others are reinstated. The action of the 2nd Party is discriminatory. He has produced the copy of the eleven documents as Ex W-1 to W-11 – the complaint lodged by him against the 2nd Party, the FIR registered on his complaint, the complaint lodged by the 2nd Party, FIR and the Charge Sheet, orders reinstating two of the persons namely Sh. Ramesha token No. 2962 and Mukthiyar token No. 558 by the Appellate Authority thereby modifying the punishment passed by Disciplinary Authority and reinstating them into duty, the payslip of two of the co-accused demonstrating that they are continuing in duty - the order passed by the 2nd Party rejecting to furnish the information sought by him under the Right to Information Act, 2005 about the details of enquiry held against reinstated employees. The tone of cross examination was himself and Sh. Channabasava took lead in the rioting thereby caused ruckus in the premises of the 2nd Party. It was never suggested during his cross examination that the 2nd Party has not reinstated the accused as alleged by him.

11. While justifying the action taken against the 1st Party workman, the 2nd Party relied on the following authorities – 1969(2)SCC 13 (the workman of the Motor Industries Co. Ltd., vs the Management of the motor industries Co. Ltd, Bangalore) and 1995(6) SCC 749 (B.C. Chathurvedi vs Union of India and others).

In the first cited Judgement three workers were imposed the punishment of dismissal while others were bailed out. The Apex Court observed that, the charges against the workers dismissed was grave while others were misguided workman who had stopped work and left their places of work without permission. But that is not the situation in the case on hand. In the criminal case the charge against all the accused persons is one and the same; role of the 1st Party workman and Sh. Channabasava is not distinguished. In the Departmental Enquiry also, it is specific allegation of incitement and abatement against him, distinguishing his case.

The 2nd cited Judgement deals with the scope of judicial review but that was a case under service Law not under the Industrial Dispute Act. Law is very much settled about the scope and ambit of Section 11-A of the Industrial Dispute Act.

12. On a perusal of the Enquiry Report, I find that same was founded on the evidentiary material available on record. The golden Rule being, appreciation of evidence in a Departmental Enquiry need not be on the scale of proof beyond reasonable doubt, the Enquiry Report cannot be branded as arbitrary or perverse. Still, I am of the firm opinion that it is fit case for exercise of jurisdiction under Section 11-A of the Act, for the following reasons that, the 1st Party workman is aged around 40 years; having the responsibility to raise a dependent family. The criminal case is still pending and it cannot be said at this stage that he is guilty of the offence under the penal Law. The 2nd Party has no answer to his defence that 14 of his co-employees who were Charge Sheeted along with him by jurisdictional Police, barring himself and Sh. Channabasava are reinstated. Nothing is shown by the 2nd Party as to whether those employees were proceeded with Departmental Enquiry? If so, what was the result of the enquiry? That leads to the inference that the 1st Party workman and his co-employee Sh. Channabasava are discriminated by the action of the 2nd Party in dismissing him from service. That is nothing but unfair labour Practice contemplated by item No. 5(a) and (b) of 5th Schedule i.e.,

5. To discharge or dismiss workmen--

(a) by way of victimisation;

(b) not in good faith, but in colourable exercise of the employer's rights……

(c)……

(d)……

(e)…….

(f)…….

(g)……

There is no contest to the fact that the Petitioner is labour leader and active trade unionist. It is quite possible that his very presence at the place of rioting would very easily catch up the attention of the 2nd Party to put the burden of the ruckus on him. Had if, the 2nd Party was able to demonstrate that, the role of the petitioner stands on a different pedestrian than that of those who were reinstated by adducing evidence before the Tribunal, then there was scope for me to endorse the action taken against him. In the absence of any such effort by the 2nd Party rebutting the case made out against the 1st Party workman, it is inevitable to hold that, the workman is discriminated from the similarly placed co-workers / co-accused because of his Trade Union activities, thus victimised. Hence, the punishment Order inflicted on him is not legal hence, not justified.

AWARD

The petition is allowed.

The order of dismissal passed against the 1st Party workman Sh. Shivakumar Math vide Ex M-4 dated 20.12.2013 in dismissing him from service is not legal hence, liable to set aside. The 2nd Party Management is directed to reinstate the 1st Party workmanSh. Shivakumar Math, Token No. 1284, BR No. 7942 to his original post without back wages with continuity of service.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th April, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 549.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हुट्टी गोल्ड माइन्स कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 08/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 549.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Hutti Gold Mines Co. Limited and their workmen, received by the Central Government on 06.07.2020.

[No. Z-16025/4/2020-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 08/2016

I Party	**II Party**
Sh. Moulappa, C/o All India Trade Union Congress Office, Upstairs, Saptagiri Complex, K.C. Road, BELLARY – 583 104.	The Managing Director, Hutti Gold Mines Co. Ltd., HUTTI – 584115 Raichur District

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. M.R.C. Ravi

AWARD

1. It is a petition under Sec 2-A of the ID Act.

The 1st Party/workman is challenging the Termination Order passed by the General Manager of the 2nd Party in terminating him from service vide order dated 04.11.2013.

He claims that, he served the 2nd Party for 28 years; due to personal and family problems, he remained absent from 16.05.2013 to 16.07.2013; the leave applications submitted by him were not processed; he was issued show cause notice dated 26.08.2013, calling for his explanation as to why disciplinary action should not be taken on the misconduct of unauthorised absence; he submitted his reply and requested to drop the proceedings; however, Domestic Enquiry was held by appointing the Assistant Manager as Enquiry Officer. The enquiry was hurriedly conducted in contravention of principles of natural justice. The Enquiry Officer submitted his report holding him guilty of charge alleged against him. Without issuing 2nd show cause notice, seeking his explanation on enquiry findings, the Disciplinary Authority imposed the major punishment of termination; termination order is devoid for reasons, lacks application of mind by the 2nd Party; the punishment is excessive and grossly disproportionate to the alleged misconduct of unauthorised absence. He was totally dependent on the job and now has no source of income.

2. The 2nd Party justified their action in their statement. It is contend that, he had availed all the leave and sick leave available to him, he was given reasonable opportunity was given to him; no proper response was given by him to three show cause notices due to which the 2nd Party was constrained to initiate disciplinary action against him, thereby, passed the Termination Order dated 04.11.2013; his appeal was dismissed after affording personal hearing; the enquiry was conducted by following the principles of natural justice.

It is further contended for the 2nd Party that, during the course of enquiry, he admitted his misconduct; the Enquiry Report was issued to him for his comments; he submitted his reply to the Enquiry Report accepting the charges and requested the 2nd Party to give him another chance to improve his attendance. His request was considered vide order dated 05.05.2008, but he failed to make good his attendance; hence, a final show cause notice was issued on 08.01.2009. The 1st Party submitted his reply dated 29.01.2009, assigning the reasons as ill health and family problems. The 2nd Party issued another final show cause notice date 10.08.2012; in his reply, he mentioned that due to his mental instability he is taking treatment at Dharwad Mental Hospital and getting treatment for his physically challenged children. He requested to pardon him. On his request, the

2nd Party gave another opportunity on humanitarian grounds by giving attendance improvement letter on 18.09.2012. Though, he received the letter, he continued to remain absent. With no other alternative, third final show cause notice dated 17.07.2013 was issued and replied by him vide letter dated 22.07.2013 reiterating the very same reasons.

Further it is stated by 2nd Party that, an enquiry to the final show cause notice dated 17.07.2013 was ordered by appointing the Deputy Manager (HR) as Enquiry Officer and Deputy Manager (Finance) as Presenting Officer. The workman received the enquiry notice and participated in the enquiry. The Enquiry Officer submitted his Report on 19.10.2013 concluding that charges levelled against him is proved. Therefore, based on the said finding, he is removed from service. He remained absent for 55 days between 12.11.2008 to 08.01.2009, for 226 days between 01.01.2010 to 30.11.2010, 276 days between 01.01.2011 to 12.07.2012. The Dismissal Order is just, fair and bonafide in accordance with Law.

3. On the rival pleadings, a Preliminary Issue was framed regarding the fairness of the Domestic Enquiry conducted against the workman. With the consent of the learned counsel of the 1st Party the Enquiry Records produced by 2nd Party were marked. On giving audience to both parties, the issue was answered upholding the fairness of the Domestic Enquiry.

4. The 1st Party workman has adduced evidence stating that, because of his physically challenged children, he suffered mental stress; one of his son is a deaf and dumb and another is physically incapacitated; his wife is seriously ill and he was compelled to marry her sister to look after his children; for the said reasons, he could not attend the work; he was referred to a Mental Hospital, Dharwad by the CMO of the 2nd Party.

However, during cross examination he stated that, he did not take treatment at Mental Hospital, Dharwad fearing that in case he is found to have mental disabilities, he would be treated mentally unfit to work; now he is physically and mentally in a fit condition to work as before.

5. It is not as if the 1st Party workman remained unauthorizedly absent for some period once or twice; records are produced by 2nd Party that, he remained unauthorizedly absence for 132 days 21.06.2007 to 31.10.2007; before the Enquiry Officer he had stated that, he has taken treatment for the psychological problems since 22.12.1998; that apart, he had to remain absent to take his son for treatment; he had stated that, though he had not taken treatment subsequent to 1998 he was under stress due to family problems. He had not disputed the Enquiry Report which held him guilty of misconduct of unauthorized absence but apologised for his misconduct and pleaded mercy. Records demonstrate that, twice his request was considered and for the third time the 2nd Party again conducted another enquiry. This time also he unequivocally admitted the allegations before the Enquiry Officer. That being so there is nothing to attribute illegality either in the enquiry finding or in the Punishment Order. Still, there remains the question of justification; the pathetic condition of the workman who is parenting two disabled children, who himself is under stress cannot be over looked to endorse the Termination Order.

He is before the Court stating that, he is both physically and mentally fit and without employment. Sec 11-A of the ID Act enables the Labour Court / Tribunal to intervene when it is felt that the Termination Order is not justified. The 1st Party workman must be about 55 years as of now left with few years of service. The personal and the family problems projected by him as the root cause for his unauthorised absence appears to be the plausible cause for his absence. If he is otherwise found fit to work, I feel that it is a fit case to exercise the jurisdiction under Sec 11-A of the ID Act for his reinstatement.

AWARD

The Petition filed by the 1st Party workman Sh. Moulappa under Sec 2-A of the I.D Act is allowed.

The Termination Order passed by the Disciplinary Authority of the 2nd Party vide order dated 04.11.2013 which is confirmed by the order of the Appellate Authority dated 18.06.2014 is not justified.

The 2nd Party is directed to treat the workman as on continuous duty and reinstate to his original post without back wages subject to his physical and mental fitness.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 550.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हुट्टी गोल्ड माइन्स कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 25/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 550.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Hutti Gold Mines Co. Limited and their workmen, received by the Central Government on 06.07.2020.

[No. Z-16025/4/2020-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH APRIL, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID 25/2015

I Party	**II Party**
Sh. Channasbasava, S/o Bassappa, R/at Hatti Village, Opp: New Panchayath, Lingasugur Taluk, Raichur District - 584115.	1. The Managing Director (AA), Hutti Gold Mines Co. Ltd., Lingasugur, District Raichur - 584115. 2. The Chief Manager (Samanvaya), Hutti Gold Mines Co. Ltd., Lingasugur, District Raichur - 584115.

Appearance

Advocate for I Party : Mr. N.M. Handral

Advocate for II Party : Mr. M.R.C. Ravi

AWARD

1. It is a petition filed under Section 10 R/w Section 2-A of the Industrial Disputes (Amendment Act 2010) Act, 1947 (for Brevity 'the Act' herein after).

2. The Petitioner is the Former employee of the Hutti Gold Mines Company Ltd., / 2nd Party who was dismissed from service as a measure of punishment, on certain charges came to be proved against him in a Departmental enquiry.

He claims that, he is a Trade Union activist and looked after the protection and interest of the workers, before the Industrial Tribunal, High Courts etc. The 2nd Party with a vindictive mind saw that a criminal case is registered against him and 15 other workers at Lingasugur Police Station. The Police Charge Sheeted him along with 14 others. The 2nd party decided to take other workers on duty barring one Shivakumar Math and himself; they initiated Domestic Enquiry also. The Enquiry Officer submitted his report, acting on the same the 2nd Party dismissed him from service. The enquiry report is unfair and not based on documentary proof; it is arbitrary. The Dismissal order is passed without application of mind in a mechanical way. His appeal was considered in a routine manner; he has been victimised and discriminated from 14 Co-employees who were

taken back into service; he is not gainfully employed hence, for direction for reinstatement with continuity of service and consequent benefits.

3. The claim is contested by the 2nd Party, the allegations levelled regarding discrimination, victimisation etc., are denied and the punishment Order is sought to be justified.

4. The Domestic Enquiry conducted against the 1st Party workman is upheld by this Tribunal vide order dated 31.05.2019.

5. The 1st Party workman has adduced evidence regarding his unemployment and also corroborated his allegation of discrimination and victimisation and he is cross examined contradicting his affidavit evidence.

6. Heard both Learned Counsels.

7. The allegation against the workman in the charge sheet dated 30.10.2013 was to the effect,

that on 26.10.2013 one employee namely Sh. Amarappa who was working in the second shift in the Mines suffered chest pain; he was admitted to the Hospital of the 2nd Party at 9:00 pm; despite treatment by the Doctors and Staff on duty, patient expired; his family members were about to shift the dead body, at that time, CSE along with his co-employees and others with malafide intension to encash the situation for personal benefit, assaulted the doctors and staff, stopped the family members from shifting the body; incited the mob gathered around there, intimidated the Doctors and the staff, abused them filthily assaulted them with I.V stand rod and B.P Operator and also inflicted blows, put threat to their lives and vowed to burn them, damaged the equipments, furnitures, the window and door shutters of the doctors room; thus, damaged the property of the Company. The Doctor suffered injury to his forehead. Despite request by the Superior Officers and the elected members of the Trade Unions and also the Police Officers, he continued to incite the mob and indulged in rioting.

Due to the above incident the Doctors and staff could not perform their duty and treat the patients. They were confined in a room under threat to their life upto 4:00 am. Thereby, he committed misconduct under Clause 19 (7), 19(9), 19(13), 19(16), 19(17), 19(19), 19(35), 19(39), 19(47) and 19(49) of the Standing Orders.

8. During the enquiry, 16 witnesses were examined for the 2nd Party and two witnesses for the CSE.

MW-1 was the Security Inspector who was on shift duty on the night on 26.10.2013, he is the direct eye witness to the alleged incident.

MW-2 is Security Officer who arrived at the spot, on getting telephone call by his in charge is a circumstantial witness.

MW-3 is the Junior Security Officer, on getting information that Sh. Amarappa is unconscious, he is another direct eye witness to the alleged incident.

MW-4 is the Security Personnel; he is another direct eye witness to the alleged incident.

MW-5 is the Security Officer who accompanied MW2.

MW-6 was Staff Nurse on duty.

MW-7 is the Junior Officer of the 2nd Party who arrived at the spot after getting information on the phone about the galata.

MW-8 is the Security Personnel; though he is an eye witness during his cross examination stated that, he did not see the CSE during the galata.

MW-9 and MW-10 are Security Personnels who followed the suit of MW-8.

MW-11 and MW-12 Security Personnels; though they were relayed as eyewitness did not corroborate the charge sheet allegations.

MW-13 is the Doctor who went to spot on hearing about the galata. He was able to slip out and contact the Higher Authorities about the incident. During the cross examination, he was not in a position to state whether the CSE indulged in rioting, assaulting or abusing the Doctor.

MW-14 was the Officer on the shift duty along with other Officers have been said to have locked the room.

MW-15 is the Staff Nurse on the shift duty.

MW-16 is the Security Personnel.

9. After the closure of the prosecution evidence, the 1st Party gave his statement. His case was that, though Sh. Amarappa was brought from Mines, there was a delay of 15 minutes to shift him to Hospital and the Doctor since delayed for 15 minutes, he expired without treatment. On getting information, he went to the Hospital along with co-employee / Sh. Shivakumar Math, he insisted the Security Personnels for Death Certificate; the workman gathered and committed rioting, since the Death Certificate was not given, they barged into the Hospital, pushed him and Sh. Shivakumar Math; though he tried to contain the rioters, that was of no avail; on arrival of the Police, he along with Sh. Shivakumar Math and others lodged a complaint against the Doctor; the workers demanded the Police to get the Managing Director to the spot which they did not oblige; however, the Managing Director came to the spot at 2:30 am; a memorandum demanding compensation to the family of deceased was given to him; thereafter, the situation came to control. His two witnesses were his co-employees, whose statement was that CSE and Sh. Shivakumar Math were trying to pacify the rioters but they did not heed.

Thus, there are sufficient materials before the Enquiry Officer to return his finding that the allegations in the Charge Sheet are proved.

In his reply to the Enquiry Report he stated that, being the member of the Executive Committee of Temporary Workers Association, he had made representation in a similar situation to the Manager for compensation to the family members of deceased. In the present case also, crowd gathered there and insisted him to demand the monetary compensation on behalf of the family members of the deceased and also the Death Certificate to know about the cause of the death. He did not incite the people for rioting and has not assaulted the staff and also not damaged the property of the 2nd Party etc. He also brought to the notice of the 2nd Party that, out of the 16 persons charge sheeted enquiry was concluded and they were taken on duty but himself and another co-employee are discriminated. Without addressing his grievance regarding discrimination, the 2nd Party has dismissed him from service.

The Appellate Authority endorsed the Punishment Order. Before this Tribunal, the 1st Party workman had led evidence that he is victimized and discriminated because of his Trade Union activities and he is unemployed. Among other things he has produced documents W-6 to W-9 in support of his contention that, the other workmen who were charge sheeted are now reinstated.

In his representation given to the Managing Director as per M-15, the 1st Party had sought to pardon him, if the Company or the Officers of the Company were harmed and exempt him from punishment; but his plea was not accepted by the 2nd Party.

10. While justifying the action taken against the 1st Party workman, the 2nd Party relied on the following authorities –1969(2) SCC 13 (the workman of the Motor Industries Co. Ltd., vs the Management of the Motor Industries Co. Ltd, Bangalore) and 1995(6) SCC 749 (B.C. Chathurvedi vs Union of India and others).

In the first cited Judgement three workers were imposed the punishment of dismissal while others were bailed out. The Apex Court observed that, the charges against the workers dismissed was grave while others were misguided workman who had stopped work and left their places of work without permission. But that is not the situation in the case on hand. In the criminal case the charge against all the accused persons is one and the same; role of the 1st Party workman and Sh. Shivakumar Math is not distinguished either in the Charge Sheet filed by the Police or in the Charge Memo on which Domestic Enquiry is held.

The 2nd cited Judgement deals with to the scope of judicial review but that was a case under service Law not under the Industrial Dispute Act. Law is very much settled about the scope and ambit of Section 11-A of the Industrial Dispute Act.

11. On a perusal of the Enquiry Report, I find that same was founded on the evidentiary material available on record. The golden Rule being, appreciation of evidence in a Departmental Enquiry need not be on the scale of proof beyond reasonable doubt, the Enquiry Report cannot be branded as arbitrary or perverse. Still, I am of the firm opinion that it is fit case for exercise of jurisdiction under Section 11-A of 'the Act', for the following reasons that, the 1st Party workman is aged around 35 years; having the responsibility to raise a dependent family. The criminal case is still pending and it cannot be said at this stage that he is guilty of the offence under the penal Law. The 2nd Party has no answer to his defence that 14 of his co-employees who were Charge Sheeted along with him by jurisdictional Police, barring himself and Sh. Shivakumar Math are reinstated. Nothing is shown by the 2nd Party as to whether those employees were proceeded with Departmental Enquiry? If so, what was the result of the enquiry? That leads to the inference that the 1st Party workman and hisco-employee Sh. Shivakumar Math are discriminated by the action of the 2nd Party in dismissing him from service. That is nothing but unfair labour Practice contemplated by item No. 5(a) and (b) of 5th Schedule i.e.,

5. To discharge or dismiss workmen--

(a) by way of victimisation;

(b) not in good faith, but in colourable exercise of the employer's rights……

(c)……

(d)……

(e)……

(f)……

(g)……

There is no contest to the fact that the Petitioner is a labour leader and active trade unionist. It is quite possible that his very presence at the place of rioting would very easily catch up the attention of the 2nd Party to put the burden of the ruckus on him. Had if, the 2nd Party was able to demonstrate that, the role of the petitioner stands on a different pedestrian than that of those who were reinstated by adducing evidence before the Tribunal, then there was scope for me to endorse the action taken against him. In the absence of any effort by the 2nd Party rebutting the case made out by the 1st Party workman, it is inevitable to hold that, the workman is discriminated from the similarly placed co-workers/co-accused because of his Trade Union activities, thus victimised. Hence, the punishment Order inflicted on him is not legal hence, not justified.

AWARD

The petition is allowed.

The order of dismissal passed against the 1st Party workman Sh. Channabasava vide Ex M-4 dated 07.11.2014 in dismissing him from service is not legal hence, liable to set aside. The 2nd Party Management is directed to reinstate the workman Sh. Channabasava, Token No. 524, BR NO. 7992 to his original post without back wages with continuity of service.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th April, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 551.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इंशोरेंस कोरपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 08/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-17012/19/2011-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 06.07.2020.

[No. L-17012/19/2011-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22ND MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 08/2012

I Party	**II Party**
Sh. Vasanta, S/o Sh. Bhimappa, Jambagaru Village, Shimoga Road, Sagara Town - 577412.	The Divisional Manager, LIC of India, Divisional Office, KSIDC Building, Sagar Road, Shimoga - 577205.

Appearance

Advocate for I Party : Mr. Dhirendra N. Katti

Advocate for II Party : Mr. B.V. Krishna

AWARD

The Central Government vide Order No. L-17012/19/2011-IR(M) dated 27.02.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the workmen of the management of Life Insurance Corporation of India, Sagar Branch in terminating the services of Sh. Vasanta, Temporary Sepoy without conducting domestic enquiry and without setting the terminal dues, is legal and justified? What relief the workman is entitled to?"**

1. The 1st Party workman claims that, he was appointed as Sepoy on temporary basis on 04.08.1998 for salary of Rs. 1600/- per month along with applicable benefits. His appointment was on the basis of the seniority in the list of Employment Exchange. He is dismissed from service vide order dated 06.12.2010 without providing him opportunity of being heard or without conducting enquiry; the Dismissal Order is illegal and opposed to principles of natural justice. He is the only earning member of the family, now is thrown to street and without any source of income. As per the Affidavit submitted by the 2nd Party before the Hon'ble Supreme Court of India, they have to confirm / regularise his service.

2. The claim is contested by the 2nd Party. It is stated that, his appointment dated 04.08.1998 was subject to terms and conditions of the employment; he accepted the terms and conditions and joined duty as Temporary Sepoy on 04.08.1998 in the temporary vacancy that has arisen on account of death of one Sh. Muralidhara; his employment is governed by the provisions of LIC of India (employment of temporary staff) instructions, 1993 and period of appointment was from the date of joining to the period pending employment of the candidate on a regular basis or transfer-in of a regular employee; his service could be terminated at any time without assigning any cause therefore. He was irregular in attending the office work and remained absent unauthorizedly on several occasions; his output and work performance was also poor; he exhibited insubordination to the superior Officers; he remained unauthorizedly absent on 21 occasions for 149 days between 06.10.2003 to 19.02.2010 and was not attending the duties since 04.05.2010 for 217 days without intimation or sanction of the office; he violated the terms and conditions of his appointment letter; the action taken against him is proper and justified.

He was given warning letters between 29.08.2003 to 17.05.2010 to improve his attendance and work performance; he has not given reply nor improved his performance and attendance. On 01.06.2009, he gave undertaking on a stamp paper assuring improvement in his attendance and work performance, still there was no improvement. Considering his undertaking on humanitarian grounds, he was given last opportunity; still, he absented without prior permission from 04.05.2010; he had not submitted leave application / medical certificate; therefore, his service was terminated vide order dated 06.12.2010 with immediate effect.

3. Both parties adduced evidence. On behalf of the 2nd Party, documents Ex M-1 to Ex M-7 are marked and advanced argument oral / written.

4. The parties are not at issue about the date of appointment, terms and conditions of appointment and Termination Order dated 24.05.2010 (Ex M-5). The examination in chief evidence of either side witnesses is mere reiteration of respective stand taken by each of them in their Claim / Counter Statement. The cross examination of witness has not changed the colour of the case made out by them. Now the question is about the legality or otherwise of the Termination Order. Though the Appointment Order is not produced in evidence, the 1st Party has not disputed the statement of the 2nd Party that his appointment as Temporary Sepoy at Sagar Branch was subject to terms and conditions of his appointment letter dated 04.08.1998; he was governed by the provisions of LIC of India (employment of temporary Staff) instructions, 1993 – the tenure of appointment was from the date of joining to the period pending employment of the candidate on regular basis or transfer-in of a regular employee – his service could be terminated at any time without assigning any cause therefore.

The Termination Order dated 06.12.2010 is marked as Ex M-7. The order depicts that service as Temporary Sepoy stands terminated with immediate effect. In the body of letter, the Disciplinary Authority has observed as follows,

> *"In view of your unauthorised absence on 21 occasions during the period from 06.10.2003 to 03.05.2010 and inspite of twelve warning letters issued to you in this regard from time to time by our Sagar Branch Office, you remained unauthorizedly absent from duty since 04.05.2010 to till date."*

The strong recommendation sent by the Branch Manager to the Divisional Office for his termination (Ex M-7) would detail the number of unauthorised absences ever since 06.10.2003 to 03.05.2010 along with the dates of the corresponding warning memos issued to him on 12 occasions. The letter also cites the undertaking given by him on a stamp paper (the original undertaking on a stamp paper dated 01.06.2009 is produced as Ex M-3).

5. It is obvious that, it is not the incident of Termination simpliciter, he is terminated on the ground of unauthorized absence. 2nd Party has not pressed into action, Clause 6 of Terms and condition of appointment order whereby, he could be removed without assigning any reason. Though several warning memos are issued to him, they have not conducted enquiry into the alleged misconduct of unauthorised absence. His leave register is borne on record as Ex M-2. Now 2nd Party cannot expect this Tribunal to endorse the action taken against the 1st Party workman, on the basis of Ex M-2. The 1st Party disputes the allegation of unauthorised absence, without there being a formal enquiry on the alleged misconduct. The Employer if wanted to dispense with the service in accordance with the terms and conditions of the employment they should have waited until the vacancy in which the 1st Party workman was working is filled up either by regular employment or by transfer-in. Having dismissed him on the allegation of misconduct the removal is not in accordance with the Clause 6 of the terms and conditions whereby they could have dispensed with his service without assigning any reason.

In either way the termination is not in accordance with the terms and condition of his employment. It is the fundamental principles operating in the area of Industrial adjudication that, before terminating an employee from the service on the ground of misconduct, he shall be given a fair opportunity to have his say against the charges and if he denies the charges an independent enquiry has to be held into the charges with opportunity to the employee to defend against the charges. If only the charges are proved during the enquiry, the Employer exercises his jurisdiction of punishing the employee.

6. In the usual course whenever it is found that the termination is illegal, reinstatement with or without back wages is the eventuality. But in the case on hand, the 1st Party workman has worked against a public vacancy which was vacant for temporary period. If the said post was filled either by direct recruit or by transfer-in, automatically his temporary engagement would be seized. During the tenure of 12 years of his service on 21 occasions he had remained absent; the period of absences ranges from one day to 35 days. Thus, it is clear that he has served in his temporary post for 12 years continuously prior to his termination. The 1st Party though a temporary workman falls in category of "*Workman*" contemplated under Sec 2(s) of the ID Act and having put up continuous service from the date of his appointment to the date of his removal as contemplated by Sec 25-B of 'the Act', his termination amounts to retrenchment as defined by Sec 2(oo) of 'the Act' but without following the mandatory provisions contemplated by Sec 25-F of 'the Act'. Hence, his termination without conducting Domestic Enquiry and without settling his terminal dues is illegal.

7. That takes us to the question of relief for which he is entitled. Either reinstatement or retrenchment compensation in accordance with the rate contemplated by Section 25-F of 'the Act' is the recourse. To order reinstatement, the hiccup is, the 2nd Party since being an instrumentality of state and is governed by its recruitment rules and the vacancy is liable to be filled by at any time. To order retrenchment compensation as per Sec 25-F of 'the Act' will also not serve the ends of justice being met, since the money value has drastically come down from the date of his appointment to this date. In that view of the matter, he shall be paid a lumpsum

compensation of Rs. 1,00,000/- (Rupees One Lakh only) towards continuous service of 12 years rendered by him.

AWARD

The reference is accepted.

The action of the 2nd Party/Management of LIC of India, Sagar Branch in terminating the services of Sh. Vasanta, Temporary Sepoy without conducting Domestic Enquiry and without settling the terminal dues is not legal and not justified.

The 2nd Party shall pay lumpsum compensation of Rs. 1,00,000/- (Rupees One Lakh only) to the workman within 60 days from the date of publication of the Award failing which, the amount shall carry future interest @ 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 22nd May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 552.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन.एम.डी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 44/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-29012/30/2012-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of NMDC Limited and their workmen, received by the Central Government on 06.07.2020.

[No. L-29012/30/2012-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST JUNE, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 44/2012

I Party	**II Party**
Sh. M. K. Ganesh, S/o M P Kariyappa, No. 16, 1st Main Road, Maruthi Nagar, Nagarbhavi Main Road, Bangalore - 560072.	The General Manager, NMDC Limited, Donimalai Township, Sandur Taluk, Karnataka - 583118.

Appearance

Advocate for I Party : Mr. N. S. Narasimha Swamy

Advocate for II Party : Mr. Pradeep S. Sawkar

AWARD

The Central Government vide Order No. L-29012/30/2012-IR(M) dated 21.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the departmental inquiry conducted against the workman Sh. M. K. Ganesh by the management of NMDC Ltd., Donimalai and the punishment imposed thereupon the workman, is fair, legal and justified? If not, to what benefits and other privileges are the workman entitled to?"

1. On receipt of the reference order notice was issued to the 1st Party, though he appeared through his learned counsel thereafter did not pursue the claim.

2. 2nd Party have filed their statement contending thus, the reference is vague without specifying the date of Domestic Enquiry and the punishment imposed; the 1st Party superannuated on 31.10.2007 vide office order dated 31.10.2007. During his service in the year 1989, 1991 and 2000, he had challenged the order of stoppage of increments and order of reversion before the Hon'ble High Court of Karnataka which was disposed off during his service itself. Subsequent to the order of Hon'ble High Court of Karnataka in W.P No. 17549/2000, no Domestic Enquiry was conducted against him, till his superannuation on 31.10.2007.

3. It is further contended that the conduct of the 1st Party was not satisfactory and did not improve even during the extended period of probation, he was cautioned vide memo dated 24.01.1989 in case of his failure to show positive improvement in his work and conduct. He was reverted back to the post of Driver Grade-III w.e.f. 30.06.1989. The said order of reversion was challenged by him before the Hon'ble High Court of Karnataka in W.P No. 22033/1989, his writ petition was dismissed vide order dated 07.11.1997 with observation that, it is open for the 2nd Party to discharge a probationer if he is unsuitable and no reasons be assigned or notice be issued, and the charge sheet issued and punishment imposed by stoppage of two increments is independent of the assessment of the 1st Party for the promoted post. A Domestic Enquiry was conducted in respect of the Charge Sheet dated 03.11.1988 for having committed major misconduct. After duly conducting Enquiry the Disciplinary Authority imposed the penalty of stoppage of two increments with cumulative effect on him. He challenged the order of Disciplinary Authority dated 28.02.1991 in the W.P No. 24183/1991 before the Hon'ble High Court of Karnataka, the Hon'ble High Court of Karnataka disposed off the writ petition vide order date 12.03.1998 observing "*without exhausting the alternative, effective and efficacious remedy, Petitioner could not have approached this Court being aggrieved by the order made by the Disciplinary Authority, reserving the liberty to the Petitioner to prefer an appeal against the order made by the Disciplinary Authority dated 28.02.1991 within two months from today and Appellate Authority would decide the appeal on merits*".

4. The 1st Party filed an appeal before the Appellate Authority on 06.04.1998, the Appellate Authority vide order dated 21.01.1999 confirmed the order of the Disciplinary Authority dated 28.02.1991. The 1st Party again challenged the orders of the Disciplinary Authority and Appellate Authority before the Hon'ble High Court of Karnataka in W.P No. 17549/2000, the writ petition was disposed off vide order dated 12.08.2003 with liberty to him to raise an appropriate dispute before the Labour Court within a month's time from 12.08.2003.....

He did not raise the dispute within the time granted by the Hon'ble High Court of Karnataka. During the service of the 1st Party the order dated 12.08.2003 passed in W.P No. 17549/2000 by the Hon'ble High Court of Karnataka was the last order. Reference is liable to be rejected.

5. The 2nd Party has produced the copy of the orders passed by the Hon'ble High Court of Karnataka in

i) W.P No. 22033/1989 dated 07.09.1997

ii) W.P No. 24183/1991 dated 12.03.1998

iii) W.P No. 17549/2000 dated 12.08.2003.

The 1st Party workman who was superannuated on 31.10.2007 after a long gap of 4 years has raised the dispute, without himself knowing what the said dispute is for. The Conciliation Authority appears to have referred the matter without examining the nature of dispute.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 01st June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 553.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनिकोर्न कोमनिकेशन एंड सेफ्टी सर्विसस बेलगांव के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 39/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-30012/9/2006-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Unicorn Communication & Safety Services, Belgaum and their workmen, received by the Central Government on 06.07.2020.

[No. L-30012/9/2006-IR (M)]
A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 05TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 39/2012

I Party

Sh. Ashok S. Hittangi,
C/o Holevva Rama Bhimajirao,
Laxminagar, Machhe,
Belgaum District - 590009.

II Party

1. The Manager,
Unicorn Communication &
Safety Services, Subhashnagar,
Belgaum District - 590009 .

2. The Manager,
M/s. Indian Oil Corporation Limited, Desur Depot,
Belgaum Road, Desur,
District: Belgaum - 590009.

Appearance

Advocate for I Party : Mr. M.D. Panigatti

AWARD

The Central Government vide Order No. L-30012/9/2006-IR(M) dated 17.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Unicorn Communication & Safety Services, Subhashnagar, Belgaum, a contractor of M/s Hindustan Petroleum Corporation Limited, Desur Depot, in terminating the services of Sh. Ashok Hittangi is legal and justified? What relief the workman is entitled to?"**

1. The 1st Party workman raised the above Industrial Dispute against his Employer / 2nd Party No. 1, who is the contractor of the 2nd Party No. 2 / Indian Oil Corporation. The 2nd Party No. 2 was impleaded after the Dispute was referred to this Tribunal. The notice issued to the 2nd Party No. 1 could not be served and returned with the endorsement "PARTY LEFT". Though, notice was served vide Paper publication in Kannada Prabha Kannada Daily dated 18.09.2017, the 2nd Party No. 1 has not appeared to contest his case. The 2nd Party No. 2 though served did not appear to contest the claim.

2. The 1st Party workman has filed his Claim Statement, his affidavit evidence and produced documents. His case is, he was appointed as a Gardener on 20.10.2004 with the 2nd Party No. 2 / Indian Oil Corporation Limited through the 2nd Party No. 1 / Uniform Communications and Safety Services who is a contractor supplying employees for recruitment by IOCL. He was selected on the basis of the certificate issued by the Department of Horticulture, Contribution towards Provident Fund was deducted from his wages by 2nd Party No. 1. He was abruptly dismissed from service from 01.10.2005 without assigning any reason; he has put up one year of continuous and unblemished service. Before terminating him from service, he was not issued show cause notice and no enquiry was held. He has produced the I.D card (Ex W-1) issued by 2nd Party No. 2; Conciliation Failure Report (Ex W-3); the Certified Copy of the order passed by the Hon'ble High Court of Karnataka filed by him in W.P No. 17506/2007 (L-TER) DD 11.11.2011 (Ex W-4), this is a Writ Petition challenging the Order passed by the Government in refusing to refer his Dispute to the Labour Court for adjudication on the ground that he entered into Settlement with the contractor on 30.11.2005; the Hon'ble High Court observed that, as per the Report of the ALC during the Conciliation talks, his employer (2nd Party No. 1) had informed that the dispute was compromised on 30.11.2005 in the presence of his advocate, an amount of Rs. 4,500/- was paid as compensation vide cheque No. 215780 dated 30.11.2005 as full and final settlement. However, the writ petitioner / 1st Party had not admitted Conciliation proceedings and Report of the ALC closing the matter as settled.

3. Initially, the claim was made against the Contractor; however, relief was sought against IOCL for reinstatement with back wages. Though, IOCL was not a Party before the Conciliation Officer subsequently is arrayed as a 2nd Respondent. The 1st Party workman himself is not seeking relief against the contractor, with regard to his claim against 2nd Party No. 2. I have to say that is much beyond the scope of issue referred for adjudication by the Government. The referred issue presupposes that Unicorn Communication and Safety Services, Subhashnagar, Belgaum is a Contractor of 2nd Party No. 2 / M/s Indian Oil Corporation Limited and the termination was ordered by the Contractor. Except an identity card in the name of IOCL, no other documentary proof is produced by the 1st Party to establish that he directly worked for IOCL.

4. So much is stated by him in his written argument that the 2nd Party No. 1 was only supplying labourers for recruitment in the Principal Employer and he is appointed after conducting oral interview by the 2nd Party No. 2 / IOCL etc., but all these averments are without documentary proof. The scope of the referred issue cannot be enlarged by this Tribunal by substituting one employer to the other. If the Government had framed an issue rather than what was claimed by the Claimant / 1st Party, it was for him to get it rectified by approaching the Competent Authority. The referred issue since suggests that the service of the 1st Party is terminated by the Contractor / 2nd Party No. 1 and now he is not seeking any relief against the said Contractor, there is mis-match between the referred issue and the claim made before this Tribunal, and no relief can be awarded as sought.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 05th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 554.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. श्री राघवेन्द्रा एन्टरप्राइसेस, बेलारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 39/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-29011/26/2005-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s Sree Raghvendra Enterprises, Bellary and their workmen, received by the Central Government on 06.07.2020.

[No. L-29011/26/2005-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH APRIL, 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 39/2005

I Party	**II Party**
1. Sh. B. Narayanaswamy, S/o Sri. B. Narashimappa, R/at Sangameshwara Nagar, Kuknoor Post, Yelburga Taluk, Koppala District - 583232.	The Chairman, M/s. Sree Raghavendra Enterprises, No. 51, Gopalaswamy Road, Gandhinagar, Bellary – 583103.
2. Mallana Gouda, S/o Sri Shankarana Gouda, R/at Rajajinagar, Sompur Compound, Kuknoor Post, Yelburga Taluk, Koppala District - 583232.	
3. The General Secretary, Sri. A.R.M. Ismail, Iron Ore Labour Union, D. No. 10, Durgappa Complex, K.C. Road, Bellary - 583101.	

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. Chandrashekar. C. Chanaspur

AWARD

The Central Government vide Order No. I-29011/26/2005-IR(M) dated 01.09.2005 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of M/s. Sree Raghvendra Enterprises, Bellary in dismissal of the services of Sh. B. Narayanaswamy S/o B. Narashimappa and Sh. Mallana Gowda S/o Shankarana Gowda, Poclaim Operator and Mining supervisor respectively in the establishment with effect from 18.10.2004 is justified? If not, to what relief the workmen are entitled for?"**

1. The cause of the two former employees of the 2nd Party Establishment / M/s Raghavendra Enterprises, Bellary is espoused by the Trade Union questioning the dismissal order dated 18.10.2004.

It is alleged that, the 2nd Party is engaged in Mining and Exporting of granites in Koppal District. Irked by the prayer of the 1st Party workmen to cover them with Welfare Schemes and increase their wages, the 2nd Party orally refused employment to them. On the intervention of ALC, Bellary, they agreed to take the workmen back to duty and pay wages in lumpsum vide Settlement under Section 12(3) of the Industrial Dispute Act; instead of taking them back to duty at kuknoor Unit; they transferred the workmen to a nonexistent Unit at Dam Basara, Gunpur District, Orissa. The transfer was motivated by extraneous consideration but not on business or administrative exigency. On being informed that, Unit at Dam Basara is not functioning at all, they requested the 2nd Party to post them back to Kuknoor Unit which was working in full swing. In turn, the 2nd Party dismissed them from service vide letter dated 18.10.2004; they are the permanent employees of the 2nd Party; their service could not have been dismissed without giving Charge Sheet and without holding an Enquiry or without complying with other legal requirement. The order of reference was challenged by the 2nd Party before the Hon'ble High Court of Karnataka and Writ Petition was dismissed on 25.11.2013. Since, the date of dismissal they are unemployed and have no other source of income.

2. The 2nd Party in their counter statement contended that, both Parties amicably settled the issue; under a settlement dated 10.03.2004 in the presence of A.L.C (Central), the 2nd Party agreed to pay in cash Rs. 12,000/- to Sh. B. Narayanaswamy and Rs. 6,000/- to Sh. Mallanagouda towards full and final settlement as back wages and other consequential benefits. Since, the 2nd Party is not a Public utility, it is not an Industry shown in the Schedule to the Industrial Dispute Act; this Tribunal has no jurisdiction to entertain the claim petition; the Settlement arrived before A.L.C is without jurisdiction. The 1st Parties did not approach the 2nd Party to receive the amount agreed under the settlement, instead they complained to the Labour Union; on coming to know of the same, the 2nd Party sent the Demand Draft on 12.08.2004 to both of them and also informed Sh. B. Narayanaswamy to join the duty as Polain Operator near Loba Village, Dam Basara, Gunpur District, Rayagada, Orissa; along with Demand Draft of Rs. 6,000/- Sh. Mallanagowda is directed to report in the above said Unit as Supervisor.

The 1st Party addressed a letter to the 2nd Party that, they are ready to report at the transferred place subject to payment of back wages and other dues and also to pay Rs. 40,000/- and 25,000/- respectively as advance payment; the letter was suitably replied. Hence, request to reject the claim of the workmen.

3. The 13 documents produced by the 1st Party were marked by the consent of 2nd Party as Ex W-1 to Ex W-13. On that recording of the evidence on merits of the case was dispensed. Both 1st Party workmen adduced their respective evidence on unemployment and there was no rebuttal evidence in respect of the same.

4. Sh. MD for the 1st Party has submitted his oral argument and 2nd Party have placed their written argument.

5. Perused the undisputed documents Ex W-1 to Ex W-13.

Under Ex W-1 which is a petition under Section 12 of 'the Act', the workmen alleged that they are denied employment without any notice and no explanation was offered to the drastic decision on the part of the Management.

Under Ex W-2, Settlement under Section 12(3) of the Act was arrived in the proceedings of 19.03.2004. The terms of the Settlement under (b) to (e) read thus,

"(b) A lumpsum amount of Rs. 12,000.00 to Sh. B. Narayanaswamy and Rs. 6,000.00 to Sh. Mallanna Gouda would be in lieu of back wages and other consequential benefits. Payment will be made by cash.

(c) It is mutually agreed that the parties would extend its whole hearted co-operation to improve and maintain discipline and will not resort to any direct action affecting the business. The management hereby agreed to settle all the disputes mutually through discussions.

(d) The parties will continue to adhere to existing industrial climate of co-ordination, understanding and sense of co-operation. The spirit of resolving disputes and differences peacefully through negotiations and constitutional means and thereby contribute to industrial peace, productivity, profitability and overall efficiency will be continued.

(e) This settlement is full and final in respect of dispute raised by the union and matter therein treated as settled."

Thus, it is clear that the lumpsum amount agreed to be given under Settlement was towards back wages and other consequential benefits but not the terminal benefits.

Ex W-3 is the complaint dated 29.03.2004 given by the workmen to the General Secretary of the Labour Union alleging non-compliance of Terms of Settlement by the 2nd Party.

Ex W-4 and Ex W-5 are the letters dated 12.08.2004 by the 2nd Party to the workmen along with a Demand Draft as agreed under the Settlement and also directing them to join their office located near Loba village, Dam Basara.... Anyhow, the copies of the said DDs' or the documentary proof of encashment of those DDs' is not placed on record.

Vide letters dated 26.08.2004 Ex W-6 and Ex W-7, the workmen responded that they are ready to report for duty "*provided that the back wages and other dues are paid immediately and to sanction Rs. 40,000/- / Rs. 25,000/- (respectively) as advance"* which may be deduced as future payment in instalment. It was also sought that "*to issue specific direction to the Management in charge / local Management in Dam Basara Unit so that, to avoid inconvenience etc.,"* when they report to work.

The 2nd Party vide Ex W-8 dated 09.09.2004 responded to Ex W-6 and Ex W-7 that *"neither there is any provision or law permitting the Management to grant you the advance amount of Rs. 40,000/- / Rs. 25,000/-*

(respectively) before joining duty. If you fail to join within a week from the receipt this reply, the Management treats that you are no more interested in your job".

Vide Ex W-9 and Ex W-10 dated 18.10.2004, the workmen were informed that they are removed from the job that they were doing earlier in the 2nd Party's Firm.

EX W-11 is the Petition by the Union under Section 12 of 'the Act' to the ALC (C). Among other things, it was alleged that "*....Kuknoor Unit is very much in existence – recently, number of new appointments have been made to augment the production and productivity therein, the Management action of transferring the petitioner workmen to far away places is totally unjust, malafide and grossly illegal."*

It appears reply statement was filed by the 2nd Party to Ex W-11 which is not made a part of the record. However, the rejoinder filed by the 1st Party to the letter dated 10.12.2004 is produced as Ex W-12.

Ex W-13 is the letter of the 2nd Party dated 05.04.2005 addressing ALC questioning his jurisdiction. It is further alleged to the effect that, the request of the workmen for back wages and other dues and also for sanction of Rs. 40,000/- / Rs. 25,000/- (respectively) is contrary to the Memorandum of Settlement.

6. Now it is an history that aggrieved by the Reference Order issued by the Under Secretary, Government of India, Ministry of Labour, New Delhi, the 2nd Party invoked the Writ Jurisdiction of the Hon'ble High Court. It appears, among other things one of the challenge against the Order of Reference was, it was not issued by the Appropriate Government. But the Hon'ble High Court in one stroke disrobed all the contentions and dismissed the Writ Petition for *being devoid of merit* (WP No. 2472/2006(L-TER) DD 25.11.2013).

Thus, the question of the jurisdiction of the Central Government is set at rest by the Hon'ble High Court.

The Identity of the workmen as the permanent employees of the 2nd Party is not disputed.

They are terminated vide annexure W-9 and W-10 dated 18.10.2004 on the allegation of not joining duty and work at the places shown to them. Unfortunately, no Charge Sheet was issued to the workmen on the said allegation.

The Dismissal Order since stigmatic, it was incumbent on the employer to issue Charge Sheet on the allegations calling for explanation and if the explanation (if given by the concerned workman) was not satisfactory to initiate independent enquiry to probe whether the allegations are proved, if so said proved charge amounting to misconduct under the Service Rules governing the service condition of the 2nd Party or as per Model Standing Order under Industrial Employment (Standing Orders) Act, 1946.

Even otherwise nothing is shown to this Tribunal that, transferred to outstation Unit was one of the condition of their service either under the Contract of Service or under any other Rules / Bylaws governing the 2nd Party. The workmen had not refused to report to the transferred place but demanded Back wages and transfer advance. The 2nd Party in their reply denied their request vide Ex W-8 and Ex W-8(a) that, *"neither there is any provision or law permitting the Management to grant you the advance amount of Rs. 40,000/- / Rs. 25,000/- (respectively) before joining duty. If you fail to join within a week from the receipt this reply, the Management treats that you are no more interested in your job".*

Unfortunately, they have not shown under what Provision or Law they transferred the workmen to the far off place after arriving at a Settlement with them "*to settle all the dispute mutually through discussions".* Thus, the Dismissal Order is not only in violation of the Terms of Settlement but also illegal for the observations made Supra. Thus, the answer to the referred issue is, the action of the 2nd Party in dismissing the services of the 1st Party workmen is illegal and not justified. The workmen are entitled to be reinstated into service to their original post.

Since, there is no contrary material to the case of the 1st Party that Kuknoor Unit in which they are serving is running effectively and profitably, they must be reinstated at the Kuknoor Unit only.

Coming to the question of back wages, in view of the Settlement under Ex W-2 dated 19.03.2004 which is violated by the 2nd Party, the workmen shall be paid back wages at 80% from 19.03.2004 till the date of taking them on duty.

AWARD

The reference is accepted.

The action of the Management of M/s. Sree Raghvendra Enterprises, Bellary in dismissal of services of Sh. B. Narayanaswamy and Sh. Mallana Gowda w.e.f 18.10.2004 is not justified.

The 2nd Party is directed to reinstate the workmen to their original post at Kuknoor Unit with 80% of back wages with continuity of service for the period 19.03.2004 till the date of reinstatement.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 28th April, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 555.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. वी. के. एन्टरप्राइसेस आफ मै. इंडियन आयल कोरपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 89/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-30011/6/2016-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s. V.K. Enterprises of M/s. Indian Oil Corporation Limited and their workmen, received by the Central Government on 06.07.2020.

[No. L-30011/6/2016-IR (M)]
A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID No. 89/2017

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 23.04.2020

The General Secretary
Tamil Nadu General Workers Union
Chintadripet
Chennai-600002 : 1st Party/Petitioner Union

AND

1. The Proprietor
V. K. Enterprises, Plot No. 617, C-Block
Flat No. 102, Parimaka Pride Apartments
AECS Layout
Kundalahalli
Bangalore-560037 : 1st Party/1st Respondent

2. The DGM (ER)
M/s. Indian Oil Corporation Ltd.
No. 139, Mahatma Gandhi Road
Chennai-600034 : 2nd Party/2nd Respondent

Appearance:

For the First Party/Petitioner Union : None

For the Second Party/1st Management : None

For the Second Party/2nd Management : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-30011/6/2016-IR (M) dtd. 05.09.2017 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the Management of M/s V.K. Enterprises as Contractors and DGM (ER), Indian Oil Corporation Ltd. As Principal Employer in not considering the charter of demand of Union (enclosed as Annexure-I) in respect of contract workmen engaged in handling/loading and unloading of LPG Cylinders is justified? If not, what relief the workmen are entitled to?*"

2. On receipt of the above reference dtd. 05.09.2017 from the appropriate Government, the dispute was registered as ID No. 89/2017 and due notices were issued to both the parties for their appearance fixing the case to 29.09.2017. The General Secretary, Tamil Nadu General Workers Union was accordingly directed to file Claim Statement on the date fixed. Neither the General Secretary / Authorized Representative nor any Counsel for the First Party Petitioner turned up. The case was accordingly adjourned for the purpose intervening several adjournments (almost 4 adjournments in the year 2017, 6 adjournments in the year 2018). None of the parties appeared. It further reveals from the Order Sheet that for the interest of justice the Tribunal suo-moto afforded several opportunities by adjourning the case to different dates in the year 2019 (almost 22 adjournments). It further reveals that a Memo filed by a person claiming to be the Counsel for the Petitioner to club the ID with ID 73/2017, which is pending disposal in this Tribunal. Even if the Memo was never supported with any Vakalatnama, the Tribunal considered the matter sympathetically and directed the Petitioner to appear and to file their Claim Statement, if any. The Petitioner, the General Secretary did not turn up nor furnished Claim Statement in any manner available to him. Even then the case was posted to some more adjournments, those are 04.02.2020, 19.02.2020 and 19.03.2020. It would not be out of place to mention that even on 19.03.2020 when the case was posted for final order, the Petitioner did not appear nor turned up to file Claim Statement.

3. Despite of many opportunities afforded in favour of the Petitioner, no progress was noticed in the ID case simply because of non-appearance and non-compliance by the Petitioner. In the circumstance it deems proper not to re-list the case for the same purpose. The case was accordingly posted for final order.

4. In view of the discussion held supra it is crystal clear that the petitioner has got no interest to proceed with the case. Thus, the Tribunal is not in a position to adjudicate the dispute as referred by the Appropriate Government as there exists no Industrial Dispute for adjudication as per the reference.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.
(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 23.04.2020)

DIPTI MOHAPATRA,Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 556.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसूर मिनिरलस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 45/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-29011/53/2001-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Mysore Minerals Limited and their workmen, received by the Central Government on 06.07.2020.

[No. L-29011/53/2001-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 04TH MAY, 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 45/2001

I Party	**II Party**
The General Secretary, Mysore Minerals Ltd., Workers Union, No. 28, Raja Snow Building, S.C. Road, Sheshadripuram, Bangalore - 560020.	The Chairman and Managing Director, Mysore Minerals Limited, No. 39, M.G. Road, Bangalore - 560001.

Appearance

Advocate for I Party : Mr. K.T. Govinde Gowda / Sh. D. Leelakrishnan

Advocate for II Party : Mr. Santhosh Narayana

AWARD

The Central Government vide Order No. L-29011/53/2001/IR(M) dated 26.06.2001 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the demands of the Mysore Minerals Limited Workers Union at Sl.no.1, 2A, 2B, 3, 4, 17, 25 & 26 as per the Union letter dated 15.01.2001 is justified? If yes, to what relief the workmen are entitled for?"

1. Following are the demands of the 1st Party Union.

1. Implementation of monthly pay scale and other benefits to the Mining Workers with retrospective date on par with Ministerial Administrative and clerical Staff of MML.

2A. Creating Grade / Designation Category.

2B. Implementation of State Government pay scale D.A., and other benefits w.e.f. 01.04.1998.

3. Payment of Dearness Allowance.

4. Payment of underground Workers allowance.

17. Withdrawal of execution of agreement by the underground Mining Workers on stamp paper of Rs. 50/-.

25. Demand for re-instatement and payment of back wages for wrongful retrenchment about to 500 mining workers in the name of so-called *Medical Un-Fit.*

26. Demand for reinstatement and payment of back wages for wrongful retrenchment of 1,308 workers in the name of invalid VRS.

2. Counter of the 2nd Party to the above demand of the 1st Party Union is,

The workmen of the 2nd Party have not authorised the Union to raise the dispute; the 1st Party has no locus standi; it is not an Industrial Dispute; it is a company owned by Government of Karnataka; established in the year 1966 for exploration and extraction of minerals in the state of Karnataka. Due to stiff competition from private enterprises, the production at Bagasepura, Kaolin works in Hassan District was stopped; work force were shifted/re-deployed to other mining quarries; the company was closed; mining operation was discontinued in all the four open caste Chromite Mines in Hassan district; in the same time as per the direction of Hon'ble Supreme Court of India for non-forest activity in the forest area mining had to stopped; therefore, Voluntary Retirement Scheme was introduced in 1998 to reduce the surplus staff and mazdoors; about 1300 employees / mazdoors opted for VRS and voluntarily retired from service under the Scheme; the Scheme came into effect from 27.09.1998 and was kept open for all the employees except those who were on deputation.

3. It is further pleaded that, the 2nd Party is implementing the Government pay scales to the employees working in the sanctioned post; it cannot concede to the demand for implementation of monthly pay scales and other benefits to the mining workmen as demanded at Demand No. 1; they do not have financial capacity to extend the benefit.

Regarding demand No. 2A – the workers are unskilled workers, the question of creating Grade / designation does not arise; the demand involves huge financial expenditure which cannot be met by them.

Regarding the demand No. 2B – State Government and 2nd Party are not comparable; the 2nd Party is running under loss for last five years; as per the guidelines of the Government the company since running under loss for last three years employees are not entitled for revision of pay scales; the Government has listed the 2nd Party either for privatisation or closure; still considering the hardship faced by the employees the management released Dearness Allowance from time to time depending upon financial positions @ 21%, 41% and 46% from 1/2000, 1/2001 and 1.06.2002 respectively to the basic pay; it is difficult to concede to the demand either retrospectively or prospectively.

Regarding demand No. 3 – Dearness Allowance as requested by the 1st Party cannot be released however, Dearness Allowance is released time to time; vide circulars issued and the demand is complied.

Regarding demand No. 4 – the demand is already complied since a long time; said allowance was enhanced from time to time; they are not in a position to enhance the allowance because of their poor financial condition.

Regarding Demand No. 17 – the agreement on stamp paper of Rs. 50/- is to be executed by the workers to avoid accidents, follow safety rules and abide to the reasonable Orders of the superiors; withdrawing the practice so far followed does not arise.

Regarding demand No. 25 – as per Mines Act 1952 and Mines Rules 1955, employees of the Mines are required to undergo periodical medical examination to ascertain their physical fitness to work in the Mines. As per the representatives of the workmen, circular was issued in advance to the workers about the necessity of conducting periodical medical examination in each of the Mines. Two Senior Officers from Hutti Gold Mines Ltd., who were qualified to conduct the medical examination of the employees working in the Mines, under took the medical examination. Wherever required the special cases were referred to specialised Hospitals; employees who are aged more than 58 years, found medically unfit and incapacitated to carry out routine mining work; were given opportunity to make appeal to the Appellate Medical Board; those who preferred appeal were continued in the service awaiting decision of the Appellate Authority; rest of them who were found medically unfit and did not prefer appeal within stipulated time, were discharged from service; the demand of reinstatement of 500 workers who are superannuated or found medically unfit to work in the Mines, does not arise.

Regarding demand No. 26 – due to compelling reasons leading to closing of Mines, permission was obtained from the Government of India to introduce VRS; same was optional in all; Rs. 12,25,52,408/- was incurred to meet the settlement of VRS; the employees who opted VRS, received benefits under VRS Settlement and relived are no more workmen of the 2nd Party and a dispute raised by them is not an Industrial Dispute.

All other averments made in the Claim Statement in support of the demands are traversed.

4. Three witnesses are examined for the 1st Party, 16 documents are marked in evidence for them. Two witnesses are examined for the 2nd Party, 38 documents are marked as exhibits.

5. At the stage of arguments, the only submission made for the 2nd Party was, *'all the demand raised by the 1st Party in their Charter of Demands are already complied by the 2nd Party. Hence, there is no existing Industrial Dispute for adjudication….'*. Unfortunately, there was no counter say to the above submission.

6. The 2nd Party questioned the locus-standi of the 1st Party Union to place the Charter of Demand / raise the Industrial Dispute. They counter to that the Mysore Minerals Employees Association (being the majority Union) is the recognised Union of the 2nd Party and the said Union only enjoys the status of bargaining with the 2nd Party; there is no gain say in this record by the 1st Party. The Settlements entered into between the Management and the Mysore Minerals Employees' Association dated 27.09.1994 and 30.09.2008 under Sec 12(3) of the ID Act are marked as Ex M-14 and Ex M-15 respectively.

As far of as Ex M-14 is concerned, it was a Tripartite Settlement arrived between the Mysore Minerals Employees' Association and the Management; the other Unions were also notified about the Charter of Demands and they took part in the negotiations also; whereas, the Mysore Minerals Employees' Union (1st Party herein) was not agreeable for the Settlement in anticipation of the upcoming secret ballot franchise to elect the majority Union. Now it is a history that, said Mysore Minerals Employees' Association came up as majority Union; the duration of the settlement was for five years w.e.f 01.07.1993.

As far as Ex M-15 is concerned, it was a Settlement between the Management and Mysore Minerals Employees' Association; it is a Settlement for five years from the date of execution that is from 30.09.2008; the Settlement among other things covers the underground allowance; introduction of Voluntary Retirement Scheme which are the demand No. 4 and demand No. 26.

7. The witnesses from the 1st Party is its Honorary President / WW-1, WW-2 is the General Secretary, WW-3 is the Organising Secretary. The Affidavit evidence of WW-1 is the reiteration of the claim statement averments. Out of sixteen documents produced for them, the relevant documents with regard to their locus-standi to pursue Charter of Demand is a note book (Ex W-15) said to be the resolution dated 31.12.2000. Accordingly it was resolved to place revised demand before the Management. The note book does not bear seal of the Union, however bears signatures and LTMs' of around 300 persons / alleged members. When it is admitted by them that, the 2nd Party has a work force numbering more than 5000 (as stated by WW-1 during his cross examination), the support given to the 1st Party vide resolution (Ex W-15) is by insignificant number of the workmen. As per Ex W-15, the meeting was held under the presidentship of Sh. K. T. Govinde Gowda / WW-1.

8. It has come in the evidence of WW-1 that, he is not the employee of the 2nd Party; no communication is received from the Management recognising the 1st Party Union. WW-1 has admitted that, the copy of notice issued to the Management on Union's registration, documents pertaining to membership fee, collection and the proof of election to the post of office bearers are not produced.

WW-1 states that more than 2500 employees including terminated employees authorised him (to place the Charter of Demand). However, document Ex W-1 contradicts his own oral statement.

WW-2 had stated that, himself and other members of the 1st Party Union had authorised the 1st Party Union to submit the demand, raise the Dispute and participate in the meeting for settlement of Dispute. Though, he has stated that all the workers involved in his case have authorised him by virtue of the resolution as observed above. Ex W-1 does not corroborate the above statement. Though in his affidavit evidence, he has stated that the 1st Party Union was registered in the year 2000 not even a bit of documentary evidence about the registration, membership and election to the executive post is placed on record.

The affidavit evidence of WW-3 is reproduction of affidavit evidence of WW-2. Though, in her affidavit evidence she claimed that she is the Organising Secretary of the 1st Party Union, admits that she has not produced document about her membership or receipt for having paid the membership fee; she fairly admits that, she does not know the contents of her affidavit evidence. That being the evidence regarding the locus-standi of the 1st Party to pursue the Charter of Demand, that goes to the root of the demands placed by the 1st Party.

Coming to the questions of the eight demands raised by them, the 2nd Party has placed on record Ex M-1 whereby approval was given by the Government vide order dated 30.09.2003 to the proposal of closure of the Mysore Minerals Limited as part of Phase-II of PE Reforms. Their annual reports and documents for the relevant period 1997 to 2004 are marked as Ex M-2 to Ex M-8. However, the real fact is presently they are into business with full force. Since, the memorandum of Settlement / Ex M-15 deals with all category of workmen including the Mining workers; item No. 10 of the Settlement deals with dust allowance working in the Mines quarries and Item No.11 is in respect of underground allowance, item No. 12 pertains to shift allowance, item No.13 is in respect of project allowance; Ex M-16 is the circular of 25.10.2006 which revises the wages in

respect of surface mazdoors and underground mazdoors and also revision of allowances with retrospective effect from 01.10.2005; Ex M-16(a) is another wage revision retrospective effect from 01.04.2006; Ex M-17 is the circular revising the Dearness Allowances covering the daily wagers dated 07.01.2000, Ex M-17(a) is a circular applying the Dearness Allowance rates to the employees of the 2nd Party w.e.f. 01.01.2001; Ex M-17(b) is another circular dated 28.05.2002, the revised rate of Dearness Allowance w.e.f. 01.06.2002; M-17(c) is the circular of 06.09.2003 revising the rates of Dearness Allowance w.e.f. 01.06.2003; M-17(d) is a circular dated 02.12.2003, M-17(e) is a circular dated 13.02.2004; Ex M-18 is the circular of 08.04.2009 revising HRA; Ex M-20 is the Office memo dated 22.01.2007 revising the underground allowance and project allowance; M-21 is the circular of 28.09.2007 revising the rates of rural allowance, underground allowance and project allowance likewise circular; Ex M-23 is a circular dated of 31.10.2008 among other things covers shift allowance, dust allowance; vide office order dated 27.10.2005 / Ex M-24. 119 daily rated mazdoors were given monthly rated scale of pay against the existing vacancies w.e.f 01.11.2005; further, 449 posts of daily rated mazdoors was upgraded to the monthly rated scale of pay; 449 daily rated mazdoors were promoted as mazdoors in monthly rated pay.

The contention of the 2nd Party is, they have complied all the demands of the 1st Party but unable to give the benefits with retrospective effects in view of the financial constraints. When it is evident that the workers of the 2nd Party had the benefit of settlement of Ex M-14 dated 27.09.1994 on the date the Charter of demand was placed before the Management and subsequently there is another settlement Ex M-15 dated 30.09.2008 and no short comings of these Settlements are shown, this Tribunal finds no justifiability in demand of the 1st Party in respect of their Demands No. 1, 2a, 2b, 3 and 4.

The demand No. 17 - in respect of withdrawal of execution of agreement for underground Mining workers on Stamp Paper Rs. 50/-; the Office Order is marked as Ex W-2; it is stated in the said Office Order that,

> "*In the wake of reopening of Byrapura Chromite Mine, the Director of Mines Safety has suggested the Management to enforce the necessary mining Rules and Regulations scrupulously, in order to ensure complete safety of the personnel employed below grounds. In pursuance of this, it is necessary to take an undertaking from the employees in Rs. 50/- stamp paper confirming to satisfaction implementation of following Mining Rules, Regulation and Act.*
>
> *(i) MMR 1961 Regulation No. 41.*
>
> *(ii) Mines Act 1952 – Act No. 72 (a)(b)(c).*
>
> *(iii) Mines Rules 1955 - Rule No. 81(1) and (2) and Standing Order of the Company.*"

The 2nd Party though admits issuance of the order Ex W-2 had stated that, no such undertaking was taken by any of the employees in pursuance of Ex W-2. None of the employees who were forced to sign the format is examined as a witness. Hence, their Demand No. 17 does not merit consideration.

With regard to the Demand No. 25 - one of the aggrieved person approached the Hon'ble High Court of Karnataka in WP No. 5615/2001 (S-RES) (Smt. K. Dundamma vs. the Mysore Minerals Limited and another) challenging her termination on the ground of over age. The Hon'ble High Court accepted her contention allowed her Petition. The Respondent was directed not to change her date of birth (04.07.1947) form the service register. According to the Management, her medical examination revealed her age as 55 years in the year 1988 thus, she was asked to retire on 28.02.2001. However, as per her date of birth in the service record she would have attained superannuation on 04.07.2005. By the order of Hon'ble High Court her premature retirement was averted. Said order challenged in appeal before the Hon'ble Division Bench did not survive. Subsequent to 2001 similarly placed employees of the 2nd Party raised Industrial Dispute and their disputes were adjudicated following the judgement of Writ Petition 5615/2001 (S-RES). In the said circumstance, the demand of the 1st Party for reinstatement of 500 mining workers warrants no relief without examining individual case.

With regard demand No. 26 – the claim is, the consent of 1308 workers were obtained under threat, coercion and undue influence and they were relieved from service from 01.11.1998 against Statutory Rules and VRS compensation was not paid. The 2nd Party has admitted that, the monetary benefits under VRS scheme was not paid within the agreed period. However, they had paid 50% of the salary from the date of relieving for the first 6 months and 75% of their last drawn wages till the date of payment of VRS amount in full. No individual workman who is made to accept the VRS against his own volition and in respect of whom the 2nd Party failed to pay the legitimate dues under the VRS Scheme is examined before the Tribunal. The delayed payment of the VRS compensation by itself does not vitiate the scheme itself. The demand for reinstatement of 1308 workmen who had opted VRS lacks merits since it is shown that, until the VRS compensation was paid in full, they were being paid 50% / 75% of their last drawn wages.

9. The evidence with regard to the threat coercion and undue influence etc., in obtaining the consent for VRS Statement is too feeble to act upon. Hence, the demands No. 1, 2A, 2B, 3, 4, 17, 25, 26 placed before the 2nd Party by the 1st Party are not justified.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 04th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसूर मिनिरलस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 109/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-29012/54/2006.आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2007) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Mysore Minerals Limited and their workmen, received by the Central Government on 06.07.2020.

[No. L-29012/54/2006-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28TH APRIL 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 109/2007

I Party	**II Party**
Sh. Mariyappa, S/o Late Sh. Ninge Gowda, Since Deceased by LR's 1a) Smt. Nanjundamma, W/o Late Mariyappa 1b) Smt. Ratnamma, D/o. Late Mariyappa 1c) Smt. Shivamma, D/o. Late Mariyappa 1d) Sh. Ningappa, S/o. Late Mariyappa 1e) Smt. Ningamma, D/o. Late Mariyappa All are residing at N.Thimalapura Village, Nagaranavile Post, Bagur Hobli, Channarayapatna Taluk, Hassan Dist - 573 131.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, Bangalore – 560 001.

Appearance

Advocate for I Party : Mr. K. T. Govinde Gowda

Advocate for II Party : Mr. T. K. Vedamurthy

AWARD

The Central Government vide Order No. L-29012/54/2006-IR(M) dated 23.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mysore Minerals Limited in terminating/ superannuating the services of Sh. Mariyappa w.e.f. 27.06.1998 is just and legal? If not, to what relief the workman is entitled?"

1. The dispute was raised by the 1st Party workman Sh. Mariyappa, who is now expired and represented by his Wife and 4 children - his Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 08.10.1983 at its Mining Unit at Byrapura Chromite Mines, Channaraypatna Taluk, Hassan District as a Mining worker. His date of birth is 08.10.1948 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 08.10.2006, on subjecting him to a Medical Examination, the 2nd Party refused employment on 27.06.1998 on the ground, he has reached superannuation. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Rule 29-C of the Mining Rules 1955 i.e., by a doctor of the Rank of Assistant Surgeon. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer/Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the Act, but without following mandatory provisions Sec 25(F), (G), (H) and (N) of the Act. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is, that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of his rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. He is gainfully employed and earning salary.

4. On behalf of 1st Party workman since deceased his son Sh. Ningappa has filed affidavit evidence and was examined in chief.

On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. Accordingly his date of Birth is still maintained as 08.10.1948. During cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-4. Ex W-1 is the Membership Application Form. Ex W-2 is the judgment of the Hon'ble High Court of Karnataka in the matter of Smt. K. Dundamma vs MML (supra). Ex W-3 is the judgment of the Division Bench of the Hon'ble High Court of Karnataka in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-4 is the common order passed by

the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to October 2008. Admittedly it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-C of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW-1 during cross-examination was ignorant as to whether change of age as per the medical certificate was intimated to the EPF Authority; He further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer or the opinion of the Medical Officer about his medical unfitness. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation/termination effected on the basis of Medical Report which was basically not in consonance with the procedure contemplated in rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the Act. Wherefore the action of the 2nd Party in terminating/superannuating the service of the 1st Party workman Sh. Mariyappa w.e.f 27.06.1998 is neither justified nor legal.

9. Having held that the termination/superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 10 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the Act for delaying in raising Industrial Dispute. Moreover, the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 1,00,000/- (Rupees One lakh Only) to Smt. Nanjundamma Wife of late Sh. Mariyappa since all their children are majors.

AWARD

The reference is accepted.

The action of the 2nd Party Management Mysore Minerals limited in terminating/superannuating the services of late Sh. Mariyappa w.e.f. 27.06.1998 is not justified.

The 2nd Party is directed to pay Rs. 1,00,000/- (Rupees One Lakh Only) to Smt. Nanjundamma Wife of deceased 1st Party workman Sh. Mariyappa within 2 months from the date of publication of the Award, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 28th April, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नोमुन्दी आयरन ओर माइन्स ऑफ टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 227/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-26012/11/2000-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 227/2000) of the Cent. Govt. Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Noamundi Iron Ore Mines of M/s. TISCO and their workmen, received by the Central Government on 06.07.2020.

[No. L-26012/11/2000-IR (M)]
A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 227/2000

Employer in relation to the management of Noamundi Iron Ore Mines of M/s. TISCO

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : Sri D. K. Verma, Advocate

For the workman. : None

State : Jharkhand. Industry:- Steel

Dated : 27.04.2020

AWARD

By Order No. L-26012/11/2000-IR(M) dated 29/06/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Noamundi Iron Ore Mines in denying employment to dependent son of Shri Kantho Naik is justified? If not to what relief Shri Ratanlal Naik, S/O Sh. Kantho Naik is entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the union/workman left appearing before the Tribunal. Thereafter again regd. notice was issued to

both the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 11/08/2000 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 6 जुलाई, 2020

का. आ. 559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.एस.आई.सी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 41/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2020 को प्राप्त हुआ था।

[सं. एल-15011/1/2012-आईआर (एम)]
ए. के. सिंह, अवर सचिव

New Delhi, the 6th July, 2020

S. O. 559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2012) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of ESIC and their workmen, received by the Central Government on 06.07.2020.

[No. L-15011/1/2012-IR (M)]
A. K. SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 04TH MAY, 2020
PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 41/2012

I Party	**II Party**
The President, ESIC Model Hospital Workers & Staff Union, No. 122, Balepet, Bangalore – 53.	The Director, ESIC Model Hospitals, Rajajinagar, Bangalore – 560053.

Appearance

Advocate for I Party : Mr. Prem Kumar

Advocate for II Party : Mr. N.S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-15011/1/2012-IR(M) dated 21.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the demands raised by the ESIC Model Hospital Workers and Staff Union vide their strike notice dated 02.04.2011 is legal and justified? What relief the said union is entitled to?"

1. The demand pertains to payment of Schedule/notified minimum wages, regularisation of services of the workmen engaged through Sham and Bogus Contractors etc.

In their Claim Statement the 1st Party listed 14 demands and also pleaded justification of those demands. It was not pleaded that, these are the demands which were notified to the 2nd Party in their strike notice dated 02.04.2011. Hence, it is not necessary to reiterate the demands and justification given to the said demand.

2. The 2nd Party in their Counter Statement disputed the very identity/status of the 1st Party Union. It is pleaded that, no demand was raised by ESIC Model Hospital Workers and Staff Union with regard to the Contract Employees of the registered Labour Contractors who carry out cleaning and other housekeeping work in the 2nd Party. The ESIC Model Hospital Employees Union is the only recognised Union under Registration No. ALC/B2/DRT/CR-13/2011 for all the Group C & D employees of the ESIC Model Hospital, Rajajinagar Bangalore; there is no other Union in the 2nd Party in the name and style of ESIC Model Hospital, Workers and Staff Union; the name of the ESIC Model Hospital Union is misused to hoodwink the Authority. The ESIC Model Hospital Employees Union in their letter head declared that they have not raised any demand before this Tribunal. Without Authority, the 1st Party has used the name of ESIC Employees Union which is an Offence under the Penal Law; the 1st Party is in the habit of abusing the process of law by repeatedly filing cases with regard to the same charter of demands before various Forums/Courts.

3. The 2nd Party further contradicts the demands mentioned in the Claim Statement and further contends that, the 2nd Party which is administrated by the Central ESI Corporation w.e.f. 01.04.2003, is neither an Industry nor a Public Sector Organisation/Undertaking and the Dispute will not fall under the Industrial Dispute Act.

They have further detailed the names of the Outsource Agency and the type of work entrusted to them along with ESI and EPF Code numbers; it is asserted that they have implemented the reimbursement to the Registered Contractors for payment of bonus to the housekeeping employees and implemented the revision in the variable Dearness Allowance under Central Minimum Wages Act for the period 07.08.2008 to 31.03.2010. The split-up rate payable to the Contractor per month is also given in a tabular form.

4. Evidence is adduced for the 1st Party through their President. There is no rebuttal evidence from the side of the 2nd Party.

5. Both have submitted their arguments.

6. In his affidavit evidence WW-1 stated to the effect that, 91 workmen listed are seeking statutory and non-statutory benefits through their Charter of Demands dated 02.04.2011. The claimants have worked as 'Group D' employees against the permanent sanctioned posts in the 2nd Party and were paid by the ESIC Hospital, directly out of the consolidated fund of India; they are working for more than 10 to 15 years, some of the employees who have performed similar nature of work are regularised in service whereas the 1st Party workmen are not considered; they worked directly under the control and supervision of the 2nd Party.

The State Government has prohibited certain category of employment in the Hospitals, sham and name lending contractors are claiming that they are paying wages to these employees; the timings, holidays and work performance and assessments of the 1st Party workmen are controlled by the 2nd Party; the 2nd Party does not have any registration under the Contract Labour (R&A) Act and the Contractors do not have licence under the Contract Labour (R&A) Act. The 2nd Party is not exempted in engaging prohibited employees.

7. The documents produced by the witness are,

Ex W-1 is the State Government Gazette notification dated 11.04.1997 prohibiting 12 categories of works in the Hospitals and Nursing Homes.

Ex W-2 is the Office Memo by the Under Secretary to the Ministry of Labour clarifying that there is no prohibition by the appropriate Government on cleaning, dusting and sweeping of Government buildings by Contract Labour (R&A) Act.

Ex W-3 is the Photostat copy of 91 workers without any nomenclature.

Ex W-4 is an authorisation in respect of WW-1 authorising WW-1 executed by the General Secretary of the 1st Party Union to prosecute the case.

8. When a reference of Industrial Dispute is made to the Tribunal, this Tribunal under the jurisdiction bestowed by Section 11 of 'the Act' is obliged to adjudicate, in accordance with the Terms of Reference. In the case on hand, the schedule to the reference order pertains to justification of the demand raised by the Union vide their strike notice dated 02.04.2011. Unfortunately, the Government did not forward the said strike notice along with the Reference Order; the 1st Party also did not produce the strike notice of 02.04.2011 served on the 2nd Party; there is not even a spell of word about the strike. Though, it is averred in the affidavit evidence of WW-1 that they had placed the Charter of Demand dated 02.04.2011 before the 2nd Party, no copy of such Charter of Demand is placed in evidence. The 2nd Party Hospital is a Central Government Statutory Body and it is not a Industry in view of Section 2(j)(2) of the Act. The Apex Court in its judgment way back in D.N. Banerji vs P.R. Mukherjee AIR 1957 SC 110, while interpreting the term 'Industry' observed thus,

> *"In case a Hospital is maintained by the Government as a part of its functions not connected with any economic activity in the sense of some trade or business, such hospital would not come within the term Industry as defined under the Act."*

For the said reason the Dispute referred in respect of the service conditions of the workmen against the 2nd Party/ESIC Model Hospital is not at all an Industrial Dispute. Not only that, the 1st Party despite having the notice of the stand of the 2nd Party failed to establish its identity and the cause of action to espouse the dispute. None of the concerned workman is examined.

For the above all reason I do not find any merit in their demand.

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 04th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

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